No. 13378

Supreme Court of Illinois

Peoria Marine & Fire Ins.Co.

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vs.

Whitehill

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 247.

1861

13378

STATE OF ILLINOIS,

Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1861.

THE PEORIA MARINE & FIRE INS. CO., *Appellant*,
vs.
JAMES C. WHITEHILL, *Appellee.*

Brief and Argument of Counsel for Appellee.

This was an action of debt, brought in the McLean Circuit Court, July, 1860. The declaration containing one count on a sealed policy of fire insurance, and the money counts and account stated.

The 1st point raised on this record by appellant is, "the allegation of total destruction on April 3d, 1860—the risk expiring *May*, 1859—*the proof showing losses by fire in April*, 1859." This objection will be noticed in full on the motion in arrest of judgment.

And "that there is no evidence in the record that a single article was consumed."

The declaration (p. 42 of record) alleges that the "drugs, medicines, surgical instruments, and library, were consumed," &c. The proof (testimony of Dement, p. 100 of record,) shows that Robinson, *the agent of appellant, was engaged with Whitehill in ascertaining the damages, and getting up proof of losses done by the fire;* that Robinson took the proofs away with him; that the drugs, surgical instruments, and books *were all damaged by fire or smoke.* Also see evidence of Reynolds and Hunt, (p. 102 of record,) who appraised damages. And Reynolds swears that Robinson, the agent, was satisfied with the appraisement.

Now the appellant complains that the allegation and proofs do not correspond, because of the averment of a total loss and the proof of a partial one. But the law is, that under an averment of total loss, the plaintiff may recover for a partial one.

2d Phillips on Ins., 2d ed, p. 638.
3d " Evidence, 4th Am. ed, and notes, p. 254.
Gardiner *vs.* Cronsdale, 2 Burr, 904.
Barney *vs.* Maryland Ins. Co., 5 Har. & J., 139.

The authority (2 Greenleaf, sec. 405,) quoted by appellant's counsel is directly overruled by this court in

Case *vs.* Hartford Ins. Co., 13 Ill., p. 680.

And the same objection was made in that case, that because there was no averment of *loss by removal*, there could be no recovery on that proof; but on page 682, the court overrule the objection.

It is clearly proven that appellee sustained damages by the fire; that the agent of the Company from Peoria came over with appellee, and had the damages appraised, and assisted in getting up proofs of loss by the fire; and that the *agent was satisfied with the appraisement;* and that the loss was $1,056.

The 2d point presented by appellant complains of the instructions to the jury for appellee.

Numbering them in consecutive order as they appear in the abstract, I will review them:

The first, about the proximity of the notary, is the law.

Angell on Ins., p. 292, sec. 299.

And there is no proof showing that any other notary or magistrate resided nearer than the notary Spawr.

The second, that objections to preliminary proofs must be made in the first instance, is also the law.

18 Ill., p. 560. Angell on Ins., p. 301, secs. 244, 245, 248.
Vos *vs.* Robinson, 9 Johns., 195.
Noyes *vs.* Washington Ins. Co., 30 Vt., 659.

The 3d instruction embraces the law as laid down by Chancellor Walworth in Ætna Ins. Co. *vs.* Tyler, (16 Wendell, 385,) where he says that if the Company put their refusal to pay on some other grounds, and do not point out defects in the preliminary proofs, their silence should be held a waiver of such defects in the proofs, *so that the same shall be considered as having been duly made according to the conditions of the policy.*

See also 30 Vermont, 659; 1 Bosw., (N. Y.) 338;
5 Duer, (N. Y.,) 587; 1 Dutch., (N. J.,) 78.
2 Kernan's (N. Y.,) 81; 4 Zabr., (N. J.,) 447.

The evidence clearly shows that no objections were made to the preliminary proofs; and when Whitehill asked if he should make other proofs, no objections were pointed out to those made. (See

testimony of Morrell.) The refusal to pay was put on the ground that Whitehill fired the house himself. The evidence further shows that the proofs of loss were made by the Company's own agent. (See testimony of Dement.)

The 6th and 7th instructions are supported by the same authorities just cited, and must surely be correct.

The 8th instruction has for its authority—

2d Greenleaf's Evid., sec. 408.
18 Ill., p, 228.

The 9th is a mere statement that if plaintiff acted *in good faith*, in giving value of his stock, &c., then *there was no fraud* on his part in that respect. That seems to be so; for where good faith is in a transaction, there is no fraud.

However, this instruction, as well as the 1st refused instruction of appellant's, was immaterial, as there was no issue of fraud, in the original application, presented by the pleadings.

The 10th instruction, taken in connection with the evidence, cannot be liable to any serious objection.

But the principal point of controversy arises on the 4th and 5th instructions, regarding the limitation clause.

The 4th instruction has for its support—

5 McLean—French *vs.* Lafayette Ins. Co., p. 463.
Develin *vs.* Wood, 2 Ind., 102.
Eagle Ins. Co. *vs.* Lafayette Ins. Co., 9 Ind., 448.

And to the same principle are the decisions in—

1 Wilson, 129. Nute *vs.* Hamilton Ins, Co., 6 Gray, 174.
Hall *vs.* People's Ins. Co., " 185.

In conflict with this instruction there are several Eastern decisions. It is a new question before this court, and I find nothing in our Reports in any wise analogous, except—

Guard *vs.* Whiteside, 13 Ill., p. 8.

I can add no argument to those urged by the courts cited, and submit the question on their decisions.

But even if that instruction be condemned by this court, it is no cause of reversal, for the 5th instruction clearly embodies the law, and is well sustained by the evidence. For the evidence, I shall have to refer your Honors to the letters of Holland, the secretary

of the Company, pp. 130, 131 of the record; the abstract does not give them in full. These letters justified the jury in finding as they did. They had a right to infer from these that there was negotiation, and that appellee awaited its results.

This 5th instruction is supported by—

5 Ind., Grant *vs.* Lexington Ins. Co., p. 26.
4 Kernan (N. Y.)—Ames *vs.* N. Y. Union Co., p 253.

And all the general principles of law recognizing the doctrine of waiver of conditions in contracts, by subsequent acts of the parties.

As to the 3d point, that appellant's instructions should have been given:

There were but *two refused.* There were three *given*, which do not appear in the abstract, but are in the record, page 188.

The 1st instruction refused was properly so, because there was no issue formed by the pleadings in relation to the application for insurance, and plaintiff below could not be expected to be prepared to prove the value of his stock when application was made.

The defendant below should have, by his pleading, presented an issue authorizing evidence of an over-valuation, and then plaintiff might have been bound to have met it.

Again: The instruction asked was wrong, because if Whitehill *acted in good faith* in giving the amount of his stock, he practiced no fraud in so doing. Good faith in the transaction certainly relieves him of fraudulent intentions.

This instruction was probably founded on the 4½ condition of the policy; but it finds no ground there to rest on, unless it be the words, "in a *valued* policy of an over-valuation," &c. But this is not a *valued* policy; there is nothing in it valued; not an article; and we were driven to prove the amount of loss at the trial. For definition of a valued policy, see

Angell on Ins.—sec. 5 of the Introduction.
Sec's 11 and 253 of Treatise.

And if it were a valued policy, there was *no over-value* in the policy, for the policy only covered $2,500, while the proof shows the stock, &c., was worth $3,000 to $4,000.

The instruction cannot be based on the 14th condition, for that does not refer to valuation, but to the description, showing the position of the risk taken.

The 2d refused instruction is dependent entirely on the disposal of the questions growing out of the 4th and 5th instructions given for plaintiff below. But if your Honors decide the 5th instruction to be law, and that the jury were justified in their verdict by the evidence supporting that instruction, then the refusal to give the said 2d instruction will not be ground of reversal.

23d Ill., p. 502.

The 4th point is the refusal to grant a new trial.

In the court below there were but *three* grounds of the motion:

1st. The court erred in admitting improper evidence on part of plaintiff.

2d. Improper instructions for plaintiff.

3d. Refusal to give instructions for defendant.

These were the only grounds. The abstract does not show the grounds of the motion, but they appear in the record, on p. 60.

Although numerous errors are assigned, still I understand it to be too plain a rule of practice, now to require cited authorities that this court will only take notice of the objections urged below on the motion for a new trial.

As to the 1st ground of the motion, that improper evidence was admitted for plaintiff, it is wholly untenable, as a mere glance at the evidence offered will show.

All the evidence offered and admitted, including the proofs of loss, &c., was absolutely necessary proof. And under the decisions referred to above, in reference to objections to preliminary proofs of loss, there can be no question, it seems to me, but that those proofs were properly admitted.

As there was no other ground urged in reference to the evidence below, except the one noticed, I shall pay no attention to the 2d and 3d errors assigned, and none to so much of the 5th assignment as urges that the verdict was against the law and evidence, because none of these objections were made on the motion below for a new trial; and if not urged in the court below, they cannot be examined into in this court.

1st Mo., p. 516—Chamberlain *vs.* Smith.
Scates' Stat., vol. 1, p. 260, sec. 24.

Ths 5th point presented by appellant is the refusal to arrest the judgment, because—

1st. The declaration alleges that the loss occurred after the risk expired.

The declaration states the policy was made 29th March, 1859, and run until May, 1859; that the fire occurred in April 1860, *of which the defendant had notice, April* 15, 1859. A clerical error in the figures 1860, in the statement of the loss, is apparent. And if this declaration contained but one count, the mistake might be fatal; but the declaration contains the common counts, of *money had, &c., and the account stated.* (See record, p. 44.)

And our statute provides that when "*an entire verdict* be given on *several* counts, the same *shall* not be set aside, &c., if *any one* or more counts be good," &c.

Scates' Stat., p. 261, sec. 25.

Now, clearly, in this declaration there is a good count, and the statute is imperative that the verdict shall not be disturbed. The statute points out the remedy for relief against the faulty counts, and if the defendant does not pursue that mode, it is his fault.

Anderson *vs.* Semple. 2 Gilm., p. 458,
19 Ill., p. 48.

But it is intimated that where the evidence is preserved, and it only applies to the faulty count, the court will arrest the judgment. Under a plain reading of our statute, that cannot be the law. A motion in arrest is based entirely on the record itself, and the court certainly will not go out of that to ascertain facts to attack the record. And the rule is, that the court will not inquire into the evidence on this motion.

Kirby's Conn. Repts.
" Wickham *vs.* Waterman, 273.
" Halsey *vs.* Mott, 277.
R. M. Charlton's Repts, State *vs.* Allen, 518.
Tidd's Practice, (3d Am. Ed.,) p. 918.

In the case of Anderson *vs.* Semple, (2d Gil., p. 458,) the court use language which might tend to support such an intimation; but their language is taken from the Ohio decisions, to which they refer. The Ohio statute is widely different from ours, and is, " *Whenever sufficient appears to sustain the verdict," &c.;* and in rendering their decisions, the Ohio court rely entirely upon that peculiar phraseology of their statute, while our statute is imperative that, *any how,* if there is one good count, the judgment must pass on the verdict. I also insist, under the aid of the verdict, the blunder is cured. The

rule adopted by this court in the case of Sullivan *vs.* Dollins, (13 Ill., p. 88,) as quoted from Chitty, (p. 673,) so intimates. We could have got no verdict below, unless we proved that the loss occurred during the time limited in the policy.

And again: This record shows that at the Fall Term, 1860, a default was taken against the defendant in the court below, and during the same term an application was made by said defendant to set aside the default. On hearing the application, the court set aside the default, on the conditions that the costs be paid, and *defendant plead to the merits of the case.* (See record, pp. 46, 48.) In November following a demurrer was filed, but no action taken on it; and in December the plea and notice were filed. Now the conditions imposed by the court, if they amount to anything at all, must preclude appellant from his motion in arrest, to the same extent that overruling a demurrer to the declaration would. Defendant accepted the terms of the court, and is now bound by them. It was required by the court that defendant, in consideration of being allowed to plead, should do so to the merits—should go to trial on the merits of the case—without regard to defects in the pleadings. It is unquestioned that if the court below had, on writ of inquiry, assessed the damages and rendered judgment on the default taken against defendant, that by virtue of the one good count in the declaration, the judgment would have been sustained.

2 Gilm., p. 458.

Did not the court intend, then, on imposing the conditions, that the defendant should go to trial of the cause on its merits, paying no heed to defects in the declaration? And if by the evidence the plaintiff was entitled to a verdict, that judgment should pass in his favor? If this be not the effect, the conditions imposed were fruitless.

It is complained, secondly—

That there is no averment that proofs of loss were furnished to the secretary, &c., in compliance with the 12th condition.

The answer to this is, that condition 12 does not require the insured to deliver proofs of loss to the secretary, but only fixes the time of payment after such proofs have been received by him.

While the 11th condition expressly provides for notice to the company, or its agent, of the fire, and the delivery in of a particular account.

All of which was done, as averred in the declaration, and sustained by the proof.

The declaration contains general averments of full performance "of all the terms and conditions in said policy." But if the averment demanded was requisite, a verdict cures the defect.

Sullivan *vs.* Dollins, 13 Ill., 88.
1 Chitty's Plead., 673.

And thirdly, it is objected that the application was not referred to or set out in the declaration. Nor can I conceive it to be essential or even proper. The authorities referred to in support of this objection I have examined, and find no such requirement. And there is nothing apparent on the record proper that an application was made. The defect, if it be one, is aided by the verdict.

But a complete answer to the 2d and 3d grounds of the 5th point is this: They were not presented in the court below as grounds for the motion in arrest. In the court below, there was but one position urged on the motion, and that was the same one urged here as the 1st ground of the 5th point. See the record, pp. 62 and 191.

The 6th point made is, that the verdict and judgment should have been for the whole amount insured as debt, and damages the amount of loss sustained.

The answer to this objection is: 1st. That the verdict in the case was an entire one—a general verdict—on the whole declaration. If the judgment were for the whole amount insured ($2,500,) as the debt, and the amount of loss ($1,056) as the damages, under the declaration and pleadings the whole debt and damages so found could be collected.

If the verdict be wrong on the special count, it surely is not on the common counts. Where an entire verdict shall be given, if there be one good count on which it may apply, it must stand, and judgment be entered.

2d Gilm., 458.

2d. As I understand the practice, the form of verdict and judgment insisted on in this 6th point applies only to suits on penal bonds, or bonds with forfeitures, and not to actions brought on contracts of like nature with the one sued on.

In this declaration there was no assignment of breaches, as there would be on a penal bond. Why is not this declaration the same as if it declared on a sealed note? This policy is a mere agreement to pay the value of goods damaged by fire, not to exceed the sum of $2,500. The parties ascertain the damage by fire to be $1,056; and this much becomes a debt for a sum certain, to-wit: for $1,056. This was payable in 60 days after proofs, &c.; it was not

paid, and damages for its detention could be properly assessed. And strictly speaking, under the conditions of this policy, we would be entitled to interest on this sum of $1,056, after the expiration of the 60 days, &c.; but it certainly is not for the appellant to complain that the damages were only 1 cent, when they should have been more.

It is not requisite that the proof or the judgment should correspond with the declaration as to the amount therein demanded as the debt.

1 Chitty's Plead., 361.

The counsel for appellant urges his objection to the form of the verdict and judgment, on the ground that this is a contract of indemnity. If his objection be sustained, then every contract of indemnity under seal, sued in debt, must be subject to the rule.

Suppose A give B a contract under seal, stipulating that he will save harmless B from the payment of a sum to C, not exceeding $2,500, and will pay B in 60 days after proof of payment on his part to C. B has to pay C $1,000, and makes proof to A; A neglects payment; an action of debt is brought on this agreement; and the verdict would properly be, for the debt $1,000, and damages $——, the interest for the detention.

Take the case in 11 Ill., 222, (Israel *vs.* Reynolds,) and suppose the instrument sued on to have been under seal, and the action, debt; the proof is made that the cost of the boiler was only $300: Would not the proper verdict be, for debt $300, and damages $——, for the detention? or, if no damages were allowed, then for $300 debt alone? The case at bar is analogous.

The 7th point, that the judgment should be reversed, calls in question the whole record; but upon an examination of it, I feel satisfied your Honors will conclude that substantial justice has been done between the parties, and that no cause for reversal exists. This liberal rule has been adopted by this court in 23d Ill., p. 502.

WILLIAM W. ORME,

Attorney for Appellee.

248 247-

Ins. Co. vs. Whitehill

Brief & argument
for appellee

Filed Apr. 30 - 1861.

L. Leland
Clerk

13378

STATE OF ILLINOIS, SS. IN THE SUPREME COURT AT OTTAWA.

Of the April Term, A. D. 1861.

THE PEORIA MARINE & FIRE INSURANCE CO., APPELLANTS, *vs.* JAMES C. WHITEHILL, APPELLEE. } *APPEAL FROM McLEAN.*

ABSTRACT OF RECORD & BRIEF.

1—3 July 27, 1860, appellee filed a precipe and bond for costs. To September Term 1860. Summons issued same day

5 August 13, 1860, summons served.

7 August 24, 1860, declaration filed.

Declaration alledges the making of the policy by appellants on the 29th day of March, A. D. 1859, which policy and the conditions are set out in the declaration.
10 The policy set out in the declaration recites the payment of $5.20 premium, and that appellants do insure appellee against loss or damage by fire $2100 on his stock of drugs and other merchandize, $200 on surgical instruments, $200 on medical library, all contained in a wood building, all as particularly described in
11 the application of the assured numbered 10,407, said application to form part of the contract, and a warranty on the part of the assured from the 29th day of March, 1859, at 12 o'clock, until May 29, 1859, at 12 o'clock, loss to be paid in sixty days after notice and proof made by the assured, in conformity to the conditions annexed to the policy.

Provided, the company were not to make good any loss occasioned by invasion, insurrection, riot &c.

The 4½ condition declares:

4½.—Applications for insurance must specify the construction and materials of the building to be insured, or containing the property to be insured; by whom occupied—whether as a private dwelling or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; whether any manufactory is carried on within or without it, and, in case of goods and merchandise, whether or not they are of the description denominated HAZARDOUS, EXTRA-HAZARDOUS, or included in the memorandum of special rates. Any misrepresent-

ation, or concealment of facts or circumstances concerning the risk on the part of the assured, or false description by the assured of a building and its contents, or the omission to make known any fact or rumor material to the risk, or in a valued policy, of an over-valuation, shall render absolutely void a policy issued upon such description or valuation.

Conditions 11 and 12 provide:

11.—All persons insured by this company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the company or its agent, and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands and verified by their oath or affirmation, they shall also declare on oath whether any, and what other insurance has been made on the same property; what was the whole value of the subject insured: what was their interest therein; in what general manner [as to trade, manufactory, merchandise or otherwise,] the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, so far as they know and believe; and procure a certificate, under the hand of a magistrate or notary public, [most contiguous to the place of fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers,] that he is acquainted with the character and circumstances of the person or persons insured, and has made diligent inquiry into the facts set forth in their statement, and knows, or verily believes, that he, she or they, really, and by misfortune, and without fraud or evil practice, hath or have sustained by such fire, loss and damage to the amount therein mentioned; and also, if required, shall produce their books of account, and other proper vouchers; and shall also, if required, submit to an examination under oath by the agent or attorney of the company, and shall answer all questions touching his, her or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and until such proofs, declarations and certificates are produced, and examination if required, the loss shall not be deemed payable. Also, if there appear any fraud or false swearing, the insured shall forfeit all claim under this policy. Damage to buildings not totally destroyed shall be appraised by disinterested men mutually agreed upon by the assured and the company or its agents, and where merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to the kind, and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article, by disinterested appraisers mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant—one-half of the appraisers' fees to be paid by the insurers. A copy of the policy to be given in the affidavit of the claimant in all cases.

12.—Payment of losses shall be made in sixty days after sufficient proof has been received by the secretary in writing, and in case difference shall arise touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties. In case of any loss or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged with others of the same kind and equal goodness, and to rebuild or repair the building or buildings; and if no no-

tice is received by the company of a loss within sixty days after it occurred, it shall be optional with the company to reject or allow the claim, or any part thereof.

The 14th condition provides:

14.—When a policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy and warranty on the part of the insured.

The 17th condition declares:

17.—It is furthermore hereby expressly provided that no suit or action against said company for the recovery of any claim upon, under or by virtue of this policy shall be sustainable in any court of law or chancery unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

The declaration then alleges that appellants became insurers to the appellee for the said sum of $2500; that at the time of the fire, appellee was the owner of the goods kept in a drug store of the value of $5,000; that on the night of Sunday, April 3, 1860, the building took fire by accident, and with said drugs, medicines,
42 surgical instruments, medical library, and other articles, all consumed, of which appellants had notice on the 15th day of April, 1859; and said plaintiff avers that he fully complied with the said policy and the conditions thereof on his part to be kept and performed, and did forthwith on the happening of said fire as aforesaid to-wit, within sixty days thereafter, to-wit, on the day succeeding the fire gave notice thereof to said company, the said defendant, and did as soon thereafter as possible deliver in a particular account of the loss and damage, subscribed by him and verified by his oath, and did procure the necessary certificate from a notary public most contiguous to the place of fire, and did otherwise fully and perfectly comply with and perform all the terms and conditions in said policy on his part to be complied with and performed, and did every act required to be done by him, and was ready and willing to do any act required of him at the request of
44 said defendant under the terms of said policy and the conditions annexed, of all which said defendant had notice, and although the time for the payment by said defendant of said loss has fully expired, yet the said defendant did not nor would pay said loss under said policy, or any part thereof, by reason whereof an action hath accrued to said plaintiff to demand and have from the said defendant the sum of $2500, parcel of the sum above demanded.

The common counts are added.

A default was taken and set aside. Pages 46 and 48.

50 November 12, 1860, a demurer was filed.

December 10, 1860, defendant filed a plea of nil debet, and a notice. The notice is as follows:

52 The plaintiff will take notice that upon the trial of this cause the defendant will prove and insist upon as his defence, That by the conditions of insurance refered to (No. xvii.) in the said policy of insurance mentioned and set forth in the said plaintiff's declaration, and which conditions are annexed to and form a part of said policy of insurance, it is expressly provided that no suit or action against
54 said company (said plaintiffs meaning) for the recovery of any claim upon or under or by virtue of said policy should be sustainable in any court of law or chancery unless such suit or action should be commenced within the term of twelve months next after any loss or damage should occur, and in case any such suit or action should be commenced against said company after the expiration of twelve months next after such loss or damage shall occur, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby attempted to be enforced. And the plaintiff avers and will prove that said supposed damage and loss by fire in the plaintiffs declaration mentioned (if any there was) did occur more than twelve months next before the commencement of this suit. The defendant will also show and give in evidence that said fire occurred through the fault and negligence of the plaintiff, his agents and servants; that the fire occurred through the wrongful acts of the plaintiff; that the plaintiff at the time of the fire was present and did not use all possible diligence in saving the property destroyed. (x.)

56 That after said loss occurred the said plaintiff did not notify the secretary of the company in writing of said loss as is provided for in condition No. xii of said policy of insurance aforesaid.

That the plaintiff has never as required by condition No. ii of his said policy of insurance made his proofs of loss. That the certificate of Jacob Spawe, the notary public, given to the plaintiff, and annexed to the affidavit of the plaintiff, and dated 11th of April, 1859, was obtained by the plaintiff by misrepresentation and fraud, and is untrue in fact. That a certificate was not obtained from the most contiguous magistrate, justice of the peace, or notary public, to the place of the fire.

On the trial the appellee offered in evidence a policy with the conditions annexed as set out in the declaration. See record, pages 66 to 98.

98 The appellee then called GEORGE T. DEMENT, who testified: I resided in Lexington, Illinois, at the time of the fire, and was the local agent of the defendants; the property insured was situated in the said town of Lexington. The first fire took place on the night of the 2nd of April, 1859, and the second fire on Sunday night of the 3rd of April, 1859, and was the fire complained of. I had notice of the fire the next morning. I told Whitehill, the plaintiff, that I would not take charge of the property as agent for the defendants, but would do so as a friend

until he (Whitehill) could go to Peoria and see about it, and that he had better go to Peoria about it. Whitehill went away from Lexington, and in a few days came back with Robinson, the agent of the defendants. I was in the store of plaintiff, and Robinson, who was an agent of the company, and the plaintiff, were
100 taking an account of the stock insured, to ascertain the damages and getting up proof of losses done by the fire. Reynolds and Hunt were acting as appraisers, mutually chosen, as I understood, to assess the damages. They had a great deal of talk and dispute about the patent medicines and other matters. I could not give their conversation. Thinks Robinson took proofs away with him. The drugs, surgical instruments and books were all damaged by fire or smoke.

The plaintiff then called WILLIAM REYNOLDS, who being first duly sworn testified as follows: I acted as one of the appraisers, chosen by plaintiff, of the loss sustained by the fire. Robinson, the traveling agent for the defendant, selected Henry Hunt as appraiser for defendant, was present. Robinson and plaintiff disputed about what was covered by the policy. Robinson contended that the patent medicines were on commission, and were not covered by the policy. We did not appraise that portion of the patent medicines which plaintiff said were on commission. The balance we did appraise. We did not know the value of surgical instruments: took Dr. McCafferty and Dr. ———'s statement of their value: plaintiff and defendant's agent agreed to taking statement of value of books and
102 instruments. We made out an appraisement of the damages, and certified and made oath to the same before Jacob Spawe, a notary public: the appraisement bill now produced and signed by Hunt and myself was the one then made out and signed by us. The whole amount of plaintiff's damages was 1,113.24. Robinson was satisfied with our appraisement.

HENRY HUNT, being called and sworn by plaintiff, testified in substance to the same fact that Reynolds did, and also that he acted as one of the appraisers at request of defendant's agent, Robinson: damage $1,113.24. Everything was more or less injured.

The plaintiffs then called JACOB SPAWE, who being sworn testified as follows: I am a notary public, and was such at the time of the fire, and resided in the town of Lexington at that time, and at the time of the fire, and was residing nearer the place where the fire occurred than any other notary public. I know where Esquire Mahan resided at the time, and by the usually travelled walk my residence was nearer than his to the place of the fire. His office was across the street nearly opposite to the fire, and nearer to it than my office. I made out the
104 certificate of the loss and took the plaintiff's affidavit, and the paper now shown to me is the same then signed by me. I am not related to any of the parties to this suit, and have no interest in the property insured, and plaintiff was in no way indebted to me. I think that Robinson, the agent of the company, was present when the affidavit and certificate was made out, the plaintiff did the writing. Robinson made no objections to the way the paper was made out.

The plaintiff then called CHARLES HOLLAND, who being sworn testified as follows: I am the secretary of the defendants. The office of the defendants is located in Peoria. The papers here shown—the affidavit of Whitehill and certificate of Spawe, and the appraisement of the loss, were handed to me in my office at Peoria by the plaintiff some time in the spring of 1859. The defendant then asked the witness what he (witness) said to the plaintiff when he left the papers with him, (witness) and at the same time stated to the court that they proposed to prove by the witness that he then objected to the sufficiency of the proof of loss, but plaintiff objected to the witness answering the question on the ground that it was not cross-examination, and the court sustained the objection, to which opinion of the court the defendants then and there excepted. The plaintiff then
105 offered in evidence the affidavit of plaintiff and the certificate of Jacob Spawe attached thereto, to which evidence the defendant objected, but the court overruled the objections, and the same was read as follows:

STATE OF ILLINOIS, } Lexington, April 11, 1859.
COUNTY OF MCLEAN. }

By this policy of insurance the Peoria Marine and Fire Insurance Company, in consideration of $5.20, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure James C. Whitehill against loss or damage by fire to the amount of twenty-five hundred dollars—$2100 on his stock of drugs and merchandise, $200 on his surgical instruments, and $200 on medical library—all contained in a wood building, occupied as a drug store, one story high, situated in the town of Lexington, Illinois. Permission to keep for sale alcohol, burning fluid, camphene and turpentine, but not to sell the same by open lights; also, permission to use camphene and fluid lamps, but to be thoroughly cleaned every day, and to trim and fill the same in all cases by daylight.
110 There was one other insurance on the property covered by the policy, of which the above is a copy. I believe the value of it at the time of the fire to be about $3000, and the loss from $1200 to $1500. The building was insured in the Illinois Mutual Insurance Company, and was owned and occupied by me alone as a drug store. The fire occurred on the night of the 2nd and 3rd instant, and, I believe, was the work of an incendiary. JAMES C. WHITEHILL.

James C. Whitehill, being duly sworn by me, deposes and says that the facts set forth in the above statement are true to the best of his knowledge and belief.

Subscribed and sworn to before me the 11th day of April, A. D. 1859. JACOB SPAWE,
Notary Public.

I do hereby certify that I am acquainted with the character and circumstances of James C. Whitehill, and that having made diligent inquiry into the facts set forth in his statement knows or verily believes that he really by misfortune, and without fraud or evil practice on his part, hath sustained by such fire loss and damage as therein set forth. JACOB SPAWE,

[L. S.] *Notary Public.*

To which opinion of the court in overruling said objections, and allowing said paper to be read in evidence, the defendants then and there excepted. The plaintiff then offered to read in evidence the appraisement bill made by Reynolds and
107 Hunt, with affidavit thereon, to the reading of which the defendant objected, but the court overruled the objection and allowed the same to be read, which is in words and figures as follows, to-wit:

LEXINGTON, April 7th, 1859.

We, the undersigned appraisers, hereby agree that we will appraise the loss and damage on Dr. Whitehill's stock according to the best of our judgment. The same to be sworn to before a justice of the peace. The loss or damage to be estimated according to the actual first cost of the stock and its present state.

108 The inventory is not deemed important in the abstract, but may be found on
129 page 108 to page 129 inclusive.

The inventory was objected to. Objection overruled and exceptions taken.

Appellee then offered in evidence a letter signed by C. Holland, Secretary,
130 dated October 7, 1859, saying the Board did not take action on appellee's case.—[Page 130.] Also, a letter dated November 10, 1859, acknowledging receipt of appellee's letter, saying Secretary was absent.

131 Also, Holland's letter dated November 15, 1859, advising appellee that he had been absent, and did not know what the Board had done, and that the company had been garnisheed.

The plaintiff rested.

Appellant moved to reject the evidence of proofs of loss on the ground that they were not in conformity with the conditions annexed to the policy, and did not correspond with the obligations in the declaration. Motion overruled and exceptions taken.

Appellant then called JACOB SPAWE, who testified that on the 21st day of June,
132 1859, I notified the defendant by letter written by Dement, defendants local agent at Lexington, that I did not want the certificate which I gave the plaintiff of his loss to be used as evidence. The defendants then introduced Charles Morrell, who being duly sworn testified as follows: I live in the city of Peoria; am a clerk in the office of the defendant, and was during the year 1859. In June, 1859, the plaintiff came to the office in Peoria, and I heard a conversation between Holland, the Secretary of defendant, and the plaintiff. The plaintiff asked Holland if he should make out any further proofs of loss. Holland told him he could if he was a mind to, that he should not pay the loss. Holland told him that he had information from Lexington about the loss, and would not pay it; that he (Holland) thought that he (plaintiff) burnt the house himself.—Whitehill (the plaintiff) said he would like to have a hearing before the Board of Directors. Holland said that he thought it would not amount to anything. Mr.

133 Holland adjusted losses. Mr. Holland had authority from the Board to determine about the payment of losses. The policy sued on was issued at Peoria on the application here shown to me, marked in my handwriting, No. 10,407, and in the application is the handwriting of plaintiff. The policy was filled up by me. The defendant here read in evidence the application referred to by witness Morrell in words and figures as follows, to-wit:

No. 10,407.

Application of James C. Whitehill, of Lexington, in the County of McLean, in the State of Illinois, for insurance against fire by the Peoria Marine and Fire Insurance Company, of Peoria, for the sum of twenty-five hundred dollars, for the term of two months from the 29th day of March, 1859.

	Estimated Value.	Am't Insured.	Rate per $100.	$.... Premium
On stock, drugs, and other merchandize in trade, inventory of January on 1859, (since which our stock has increased)	$3917 51	$2100		1¼
On surgical instruments	$243 00	$200		
On medical library	$275 00	$200		
	$4435 51	$2500		$5 20

138 Appellant then called G. H. Franklin, who testified that he slept near Whitehill's store at his office; that on Sunday night of the first fire he was aroused by the cry of fire and the report of a gun; got up and went to fire; saw it was Whitehill's store; was almost first one at the fire; Robert was next; about 5, it may be ten minutes of, I got to the fire; Whitehill came; Whitehill and witness talked about fire; Whitehill said he had heard gun and alarm of fire; Whitehill lived about five or six blocks from store.

The defendant then introduced C. H. Preble, who being duly sworn testified as follows: On Saturday, the day before the fire, I went to the store of plaintiff to settle with him; he said his books, or some of his books, were at his dwelling-house; I had seen the books in the store before that time; plaintiff said that he could not then settle with me for the want of his books, or some of them, which were at his house, and he was drawing off accounts, and did not settle my account; had been running about two years.

The defendants then introduced George T. Dement, who testified as follows: I was agent for the defendants in the town of Lexington; the plaintiff applied to
139 me to insure his drug store, but I refused to do so; I told plaintiff that I intended to resign my agency on account of my other business, and that he would have to go to Peoria to get his policy. The fire took place on the first occasion on Saturday night, the second of April, 1859, and there was no alarm created by it, and it apparently died out itself. The second fire occurred on Sunday night, April 3rd, 1859, and was extinguished by the citizens. I went to see the fire and the plaintiff was present; this was on Monday morning. I told plaintiff that I thought the burning fluid had been taken out of the cask and spread over the

building with the counter brush. The plaintiff said that the temperance men had been, as he was told, threatening to burn it; he said the temperance men had threatened him to burn his store. On Friday before the fire the plaintiff told me
140 that he had lost the key to the back door of his store, and wanted to get another of me, but did not get one, as I had none that he said would fit his lock. He said that at the time of the fire his wife was sick, and he had a pain in the bowels, and was up when the fire occurred.

The defendant then called REYNOLDS, who testified that he was a druggist and lived in Lexington, and was one of the appraisers, and knew the stock of drugs insured by plaintiff. Stock of drugs was worth about $2,000; that he would have given that amount for them; that the patent medicines were worth about $500; do not know what the library and surgical instruments were worth; would think the whole worth $3,000.00.

The defendant then called HUNT, who testified that he was brought up a druggist, and was one of the appraisers; that the stock of drugs and patent medicines and furniture in the store were worth about three thousand dollars.

The defendant then called John Fulwiler, who testified that he was the agent of the Illinois Mutual insurance Company; that on the 17th day of March, 1859,
141 plaintiff came to witness to get the building, in which said stock of drugs were, insured in the said Illinois Mutual Insurance Company; got the building insured; policy did not arrive from Alton until Friday before the fire; the plaintiff inquired two or three times of witness if his policy had arrived before it did come to hand; told plaintiff on the Saturday before the fire that the policy had come to hand; witness had a conversation with plaintiff about the fire; plaintiff said that the temperance men had set the building on fire; witness replied that the temperance men would not do such a thing; I was one of the temperance men.

Appellant rested.

Appellee then offerred in evidence a policy of insurance, dated May 29, 1857. —See record, page 141 to page 183. It is not copied in the abstract.

184 JACOB SPAWE called; said he regretted signing the letter written by Dement and sent to defendants, and was now willing to stand by his certificate. M. W. Strager, who states that he was present when Spawe gave plaintiff certificate of loss; Robinson, the agent for defendant, and plaintiff were present; witness told Spawe to put his notarial seal to certificate of loss and affidavit; Robinson said, never mind, the Company will make no objections on that account. J. W. Parly in February, 1859, just before plaintiff moved, helped him take an inventory of stock; does not remember amount, but does remember that patent medicines were in amount from $\frac{1}{3}$ to $\frac{1}{2}$ of whole stock of medicines.

The foregoing was all the evidence offered in the cause both by plaintiff and defendants. Thereupon the plaintiff moved the court to instruct the jury as follows:

That if by any open approach to the place of fire the residence of the notary Spawe was nearer than any other notary or magistrate, then his certificate is a sufficient compliance with the clause in the conditions requiring the certificate of a magistrate or notary most contiguous to the place of the fire.

That defendant cannot now raise any objections to the preliminary proofs and
185 certificates of loss that were not specifically pointed out to plaintiff at the time of making and obtaining the same, and delivering them to defendant or its agent.

That if defendant placed its refusal to pay on the ground that the plaintiff set fire to the building, and did not designate its objections to the preliminary proofs such ground of refusal and failure to point out defects in the proofs is a waiver of any defects in the proofs, and such proofs will be considered as a substantial compliance to the conditions of the policy.

That the condition to the policy requiring suit to be brought within one year after the loss or damage occurs is void, and is no bar to the plaintiff's action.

That if the jury believe from the evidence that the plaintiff and defendant were negotiating about the plaintiffs loss, and the defendant on its part by such negotiation, delayed plaintiff for a large part of the year following the loss; then, even
186 if the conditions requiring suit to be brought within the year be valid under such circumstances, defendant cannot set up such conditions to defeat plaintiff's suit.

That if the defendants by its agents received plaintiff's preliminary proofs of loss under the policy and its conditions the defendant cannot afterwards reject such proof unless it pointed out specifically to plaintiff the defect or omission complained of.

That if defendants agent assisted the plaintiff in making out and preparing the proofs of loss, and the inventory and appraisement of damages, and took the same and delivered them to defendant, the defendant cannot now object to any mere formal defects in such proofs.

That in order to relieve themselves from liability under their policy on the ground that the plaintiff fired the building in which the goods were, the defendant must prove to the satisfaction of the jury beyond reasonable doubt that plaintiff committed the act or procured it to be done.

If the jury believe from the evidence that the plaintiff in good faith believed his stock, books, &c., to be with the amounts represented to the Company, then
187 there is no fraud on plaintiff's part in that respect.

That if they believe from the evidence that the defendant insured the stock of drugs, instruments and library of plaintiff against loss or damage by fire, and that the said stock of drugs, instruments and library were damaged by fire during the time for which they were insured, and that plaintiff, on his part, has substantially

187 complied with the conditions of the policy of insurance and used no fraud in obtaining the policy, then the jury will find for plaintiff the amount of such damages proven, unless they further believe from the evidence that plaintiff set fire to the building or goods, or caused the same to be done.

To the giving of all said instructions, the said defendants excepted.

189 And thereupon the defendants requested the court to give the following instructions to the jury:

That it is immaterial in this case whether Whitehill believed his stock of drugs, surgical instruments and library were worth the amount he represented them to be, and if the same were not in fact worth what he stated them to be in his application, and the jury so find from the evidence, they will find for the defendant.

If the jury believe from the evidence that it was one of the conditions annexed to the policy that no suit or action against said defendant by the said plaintiff for the recovery of any claim upon under or by virtue of said policy should be sustained in any court of law or chancery unless such suit should be commenced within the term of twelve months from and after any loss or damage shall occur. And if the jury further believe that this suit was not commenced within twelve
190 months from the time of the fire, then the jury will find for the defendants.

Which the Court refused to give to the jury, to which refusal of the Court the defendants excepted.

The jury found for the plaintiff below. Debt $1056.00. Damages one cent. —Record, page 60.

61 & 193 The defendant below entered a motion for a new trial. Motion overruled and exceptions taken.

62 & 191 The defendant then entered a motion in arrest of judgment. Motion overruled and exceptions taken.—(See record, page 191.) Exceptions properly taken.
64 Judgment for debt $1056.00. Damages 1 cent.

The defendant appealed to this Court, and now assigns the following errors on the record:

1. The Court below erred in admitting proper evidence on the part of appellee.

2. The Court below erred in excluding proper evidence offered by appellant.

3. The Court below erred in giving improper instructions asked by appellee.

4. The Court below erred in refusing to give proper instructions asked by appellant.

5. The Court below erred in overruling the motion to set aside the verdict and to grant a new trial. The verdict was against the law and evidence.

6. The Court below erred in overruling the motion in arrest of judgment.

7. The proof below did not support the allegations in the declaration.

8. The Court below erred in rendering judgment for plaintiff below.

9. The verdict and judgment are informal, improper and unlawful.

10. The verdict and judgment should have been for the defendant below.

11. Other errors.

PLAINTIFF'S POINTS AND BRIEF.

1. The declaration alleges the total destruction of the property on the 3d day of April, 1860. The risk expired May 29, 1859. The proof shows that two fires occurred: the first April 1st, 1859, and the second April 3, 1859.

There is no evidence in the record that a single article was consumed. The proofs did not sustain the declaration.

2 Greenleaf on evidence, page 437, § 405.

2. The instructions given for appellee are not law, especially the one declaring the 15th condition of the policy void.

The record shows the suit was not commenced within a year after the loss.

2 Phillips on insurance, page 618, latter part of Sec. 1984.

3. The instructions asked by appellant should have been given.

2 Phillips on insurance 618, Sec. 1983.
Croy vs. Hartford Fire Insurance Company 1, Blatchford, C. C. Reports 280.

4. The Court should have granted a new trial.

5. The Court below should have arrested the judgment.

1. The time alleged in the declaration that the loss occurred was after the risk expired.

2. The 12th condition provides that payment shall be made in 60 days after sufficient loss has been received by the Secretary. There is no averment in the declaration that any proofs of loss were furnished to the Secretary.

2 Phillips on Insurance, page 617, Sec. 1983.

3. The application is not referred to or set out in the declaration.

See Angell on Fire and Life Insurance, page 437, Sec. 366.
Ellis on Insurance, page 135.

6. The verdict and judgment should have been for the whole amount insured as debt, and the damages the amount of loss sustained :—the contract being one of Indemnity merely.

7. The Judgment should be reversed.

247

The Penn Marine & Fire Insurance Co

vs

Thos C. Winchester

Abstract

Filed April 17, 1861

L. Delany

Clerk

STATE OF ILLINOIS, SS. IN THE SUPREME COURT AT OTTAWA.

Of the April Term, A. D. 1861.

THE PEORIA MARINE & FIRE INSURANCE CO., APPELLANTS, *vs.* JAMES C. WHITEHILL, APPELLEE. } *APPEAL FROM McLEAN.*

ABSTRACT OF RECORD & BRIEF.

1—3 July 27, 1860, appellee filed a precipe and bond for costs. To September Term 1860. Summons issued same day

5 August 13, 1860, summons served.

7 August 24, 1860, declaration filed.

Declaration alledges the making of the policy by appellants on the 29th day of March, A. D. 1859, which policy and the conditions are set out in the declaration.

10 The policy set out in the declaration recites the payment of $5.20 premium, and that appellants do insure appellee against loss or damage by fire $2100 on his stock of drugs and other merchandize, $200 on surgical instruments, $200 on medical library, all contained in a wood building, all as particularly described in

11 the application of the assured numbered 10,407, said application to form part of the contract, and a warranty on the part of the assured from the 29th day of March, 1859, at 12 o'clock, until May 29, 1859, at 12 o'clock, loss to be paid in sixty days after notice and proof made by the assured, in conformity to the conditions annexed to the policy.

Provided, the company were not to make good any loss occasioned by invasion, insurrection, riot &c.

The 4½ condition declares:

4½.—Applications for insurance must specify the construction and materials of the building to be insured, or containing the property to be insured; by whom occupied—whether as a private dwelling or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; whether any manufactory is carried on within or without it, and, in case of goods and merchandise, whether or not they are of the description denominated HAZARDOUS, EXTRA-HAZARDOUS, or included in the memorandum of special rates. Any misrepresent-

ation, or concealment of facts or circumstances concerning the risk on the part of the assured, or false description by the assured of a building and its contents, or the omission to make known any fact or rumor material to the risk, or in a valued policy, of an over-valuation, shall render absolutely void a policy issued upon such description or valuation.

Conditions 11 and 12 provide:

11.—All persons insured by this company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the company or its agent, and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands and verified by their oath or affirmation, they shall also declare on oath whether any, and what other insurance has been made on the same property; what was the whole value of the subject insured: what was their interest therein; in what general manner [as to trade, manufactory, merchandise or otherwise,] the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated, so far as they know and believe; and procure a certificate, under the hand of a magistrate or notary public, [most contiguous to the place of fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers,] that he is acquainted with the character and circumstances of the person or persons insured, and has made diligent inquiry into the facts set forth in their statement, and knows, or verily believes, that he, she or they, really, and by misfortune, and without fraud or evil practice, hath or have sustained by such fire, loss and damage to the amount therein mentioned; and also, if requred, shall produce their books of account, and other proper vouchers; and shall also, if required, submit to an examination under oath by the agent or attorney of the company, and shall answer all questions touching his, her or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and until such proofs, declarations and certificates are produced, and examination if required, the loss shall not be deemed payable. Also, if there appear any fraud or false swearing, the insured shall forfeit all claim under this policy. Damage to buildings not totally destroyed shall be appraised by disinterested men mutually agreed upon by the assured and the company or its agents, and where merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to the kind, and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article, by disinterested appraisers mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant—one-half of the appraisers' fees to be paid by the insurers. A copy of the policy to be given in the affidavit of the claimant in all cases.

12.—Payment of losses shall be made in sixty days after sufficient proof has been received by the secretary in writing, and in case difference shall arise touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties. In case of any loss or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged with others of the same kind and equal goodness, and to rebuild or repair the building or buildings; and if no no-

tice is received by the company of a loss within sixty days after it occurred, it shall be optional with the company to reject or allow the claim, or any part thereof.

The 14th condition provides:

14.—When a policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy and warranty on the part of the insured.

The 17th condition declares:

17.—It is furthermore hereby expressly provided that no suit or action against said company for the recovery of any claim upon, under or by virtue of this policy shall be sustainable in any court of law or chancery unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

The declaration then alleges that appellants became insurers to the appellee for the said sum of $2500; that at the time of the fire, appellee was the owner of the goods kept in a drug store of the value of $5,000; that on the night of Sunday, April 3, 1860, the building took fire by accident, and with said drugs, medicines,
42 surgical instruments, medical library, and other articles, all consumed, of which appellants had notice on the 15th day of April, 1859; and said plaintiff avers that he fully complied with the said policy and the conditions thereof on his part to be kept and performed, and did forthwith on the happening of said fire as aforesaid to-wit, within sixty days thereafter, to-wit, on the day succeeding the fire gave notice thereof to said company, the said defendant, and did as soon thereafter as possible deliver in a particular account of the loss and damage, subscribed by him and verified by his oath, and did procure the necessary certificate from a notary public most contiguous to the place of fire, and did otherwise fully and perfectly comply with and perform all the terms and conditions in said policy on his part to be complied with and performed, and did every act required to be done by him, and was ready and willing to do any act required of him at the request of
44 said defendant under the terms of said policy and the conditions annexed, of all which said defendant had notice, and although the time for the payment by said defendant of said loss has fully expired, yet the said defendant did not nor would pay said loss under said policy, or any part thereof, by reason whereof an action hath accrued to said plaintiff to demand and have from the said defendant the sum of $2500, parcel of the sum above demanded.

The common counts are added.

A default was taken and set aside. Pages 46 and 48.

50 November 12, 1860, a demurer was filed.

December 10, 1860, defendant filed a plea of nil debet, and a notice. The notice is as follows:

52 The plaintiff will take notice that upon the trial of this cause the defendant will prove and insist upon as his defence, That by the conditions of insurance refered to (No. xvii.) in the said policy of insurance mentioned and set forth in the said plaintiff's declaration, and which conditions are annexed to and form a part of said policy of insurance, it is expressly provided that no suit or action against
54 said company (said plaintiffs meaning) for the recovery of any claim upon or under or by virtue of said policy should be sustainable in any court of law or chancery unless such suit or action should be commenced within the term of twelve months next after any loss or damage should occur, and in case any such suit or action should be commenced against said company after the expiration of twelve months next after such loss or damage shall occur, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby attempted to be enforced. And the plaintiff avers and will prove that said supposed damage and loss by fire in the plaintiffs declaration mentioned (if any there was) did occur more than twelve months next before the commencement of this suit. The defendant will also show and give in evidence that said fire occurred through the fault and negligence of the plaintiff, his agents and servants; that the fire occurred through the wrongful acts of the plaintiff; that the plaintiff at the time of the fire was present and did not use all possible diligence in saving the property destroyed. (x.)

56 That after said loss occurred the said plaintiff did not notify the secretary of the company in writing of said loss as is provided for in condition No. xii of said policy of insurance aforesaid.

That the plaintiff has never as required by condition No. ii of his said policy of insurance made his proofs of loss. That the certificate of Jacob Spawe, the notary public, given to the plaintiff, and annexed to the affidavit of the plaintiff, and dated 11th of April, 1859, was obtained by the plaintiff by misrepresentation and fraud, and is untrue in fact. That a certificate was not obtained from the most contiguous magistrate, justice of the peace, or notary public, to the place of the fire.

On the trial the appellee offered in evidence a policy with the conditions annexed as set out in the declaration. See record, pages 66 to 98.

98 The appellee then called GEORGE T. DEMENT, who testified: I resided in Lexington, Illinois, at the time of the fire, and was the local agent of the defendants; the property insured was situated in the said town of Lexington. The first fire took place on the night of the 2nd of April, 1859, and the second fire on Sunday night of the 3rd of April, 1859, and was the fire complained of. I had notice of the fire the next morning. I told Whitehill, the plaintiff, that I would not take charge of the property as agent for the defendants, but would do so as a friend

until he (Whitehill) could go to Peoria and see about it, and that he had better go to Peoria about it. Whitehill went away from Lexington, and in a few days came back with Robinson, the agent of the defendants. I was in the store of plaintiff, and Robinson, who was an agent of the company, and the plaintiff, were
100 taking an account of the stock insured, to ascertain the damages and getting up proof of losses done by the fire. Reynolds and Hunt were acting as appraisers, mutually chosen, as I understood, to assess the damages. They had a great deal of talk and dispute about the patent medicines and other matters. I could not give their conversation. Thinks Robinson took proofs away with him. The drugs, surgical instruments and books were all damaged by fire or smoke.

The plaintiff then called WILLIAM REYNOLDS, who being first duly sworn testified as follows: I acted as one of the appraisers, chosen by plaintiff, of the loss sustained by the fire. Robinson, the traveling agent for the defendant, selected Henry Hunt as appraiser for defendant, was present. Robinson and plaintiff disputed about what was covered by the policy. Robinson contended that the patent medicines were on commission, and were not covered by the policy. We did not appraise that portion of the patent medicines which plaintiff said were on commission. The balance we did appraise. We did not know the value of surgical instruments: took Dr. McCafferty and Dr. ———'s statement of their value: plaintiff and defendant's agent agreed to taking statement of value of books and
102 instruments. We made out an appraisement of the damages, and certified and made oath to the same before Jacob Spawe, a notary public: the appraisement bill now produced and signed by Hunt and myself was the one then made out and signed by us. The whole amount of plaintiff's damages was 1,113.24. Robinson was satisfied with our appraisement.

HENRY HUNT, being called and sworn by plaintiff, testified in substance to the same fact that Reynolds did, and also that he acted as one of the appraisers at request of defendant's agent, Robinson: damage $1,113.24. Everything was more or less injured.

The plaintiffs then called JACOB SPAWE, who being sworn testified as follows: I am a notary public, and was such at the time of the fire, and resided in the town of Lexington at that time, and at the time of the fire, and was residing nearer the place where the fire occurred than any other notary public. I know where Esquire Mahan resided at the time, and by the usually travelled walk my residence was nearer than his to the place of the fire. His office was across the street nearly opposite to the fire, and nearer to it than my office. I made out the
104 certificate of the loss and took the plaintiff's affidavit, and the paper now shown to me is the same then signed by me. I am not related to any of the parties to this suit, and have no interest in the property insured, and plaintiff was in no way indebted to me. I think that Robinson, the agent of the company, was present when the affidavit and certificate was made out, the plaintiff did the writing. Robinson made no objections to the way the paper was made out.

The plaintiff then called CHARLES HOLLAND, who being sworn-testified as follows: I am the secretary of the defendants. The office of the defendants is located in Peoria. The papers here shown—the affidavit of Whitehill and certificate of Spawe, and the appraisement of the loss, were handed to me in my office at Peoria by the plaintiff some time in the spring of 1859. The defendant then asked the witness what he (witness) said to the plaintiff when he left the papers with him, (witness) and at the same time stated to the court that they proposed to prove by the witness that he then objected to the sufficiency of the proof of loss, but plaintiff objected to the witness answering the question on the ground that it was not cross-examination, and the court sustained the objection, to which opinion of the court the defendants then and there excepted. The plaintiff then
105 offered in evidence the affidavit of plaintiff and the certificate of Jacob Spawe attached thereto, to which evidence the defendant objected, but the court overruled the objections, and the same was read as follows:

STATE OF ILLINOIS, } Lexington, April 11, 1859.
COUNTY OF MCLEAN. }

By this policy of insurance the Peoria Marine and Fire Insurance Company, in consideration of $5.20, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure James C. Whitehill against loss or damage by fire to the amount of twenty-five hundred dollars—$2100 on his stock of drugs and merchandise, $200 on his surgical instruments, and $200 on medical library—all contained in a wood building, occupied as a drug store, one story high, situated in the town of Lexington, Illinois. Permission to keep for sale alcohol, burning fluid, camphene and turpentine, but not to sell the same by open lights; also, permission to use camphene and fluid lamps, but to be thor-
106 oughly cleaned every day, and to trim and fill the same in all cases by daylight. There was one other insurance on the property covered by the policy, of which the above is a copy. I believe the value of it at the time of the fire to be about $3000, and the loss from $1200 to $1500. The building was insured in the Illinois Mutual Insurance Company, and was owned and occupied by me alone as a drug store. The fire occurred on the night of the 2nd and 3rd instant, and, I believe, was the work of an incendiary. JAMES C. WHITEHILL.

James C. Whitehill, being duly sworn by me, deposes and says that the facts set forth in the above statement are true to the best of his knowledge and belief.

Subscribed and sworn to before me the 11th day of April, A. D. 1859. JACOB SPAWE,
Notary Public.

I do hereby certify that I am acquainted with the character and circumstances of James C. Whitehill, and that having made diligent inquiry into the facts set forth in his statement knows or verily believes that he really by misfortune, and without fraud or evil practice on his part, hath sustained by such fire loss and damage as therein set forth. JACOB SPAWE,

[L. S.] *Notary Public.*

To which opinion of the court in overruling said objections, and allowing said paper to be read in evidence, the defendants then and there excepted. The plaintiff then offered to read in evidence the appraisement bill made by Reynolds and
107 Hunt, with affidavit thereon, to the reading of which the defendant objected, but the court overruled the objection and allowed the same to be read, which is in words and figures as follows, to-wit:

LEXINGTON, April 7th, 1859.

We, the undersigned appraisers, hereby agree that we will appraise the loss and damage on Dr. Whitehill's stock according to the best of our judgment. The same to be sworn to before a justice of the peace. The loss or damage to be estimated according to the actual first cost of the stock and its present state.

108 The inventory is not deemed important in the abstract, but may be found on
129 page 108 to page 129 inclusive.

The inventory was objected to. Objection overruled and exceptions taken.

Appellee then offered in evidence a letter signed by C. Holland, Secretary,
130 dated October 7, 1859, saying the Board did not take action on appellee's case.—[Page 130.] Also, a letter dated November 10, 1859, acknowledging receipt of appellee's letter, saying Secretary was absent.

131 Also, Holland's letter dated November 15, 1859, advising appellee that he had been absent, and did not know what the Board had done, and that the company had been garnisheed.

The plaintiff rested.

Appellant moved to reject the evidence of proofs of loss on the ground that they were not in conformity with the conditions annexed to the policy, and did not correspond with the obligations in the declaration. Motion overruled and exceptions taken.

Appellant then called JACOB SPAWE, who testified that on the 21st day of June,
132 1859, I notified the defendant by letter written by Dement, defendants local agent at Lexington, that I did not want the certificate which I gave the plaintiff of his loss to be used as evidence. The defendants then introduced Charles Morrell, who being duly sworn testified as follows: I live in the city of Peoria; am a clerk in the office of the defendant, and was during the year 1859. In June, 1859, the plaintiff came to the office in Peoria, and I heard a conversation between Holland, the Secretary of defendant, and the plaintiff. The plaintiff asked Holland if he should make out any further proofs of loss. Holland told him he could if he was a mind to, that he should not pay the loss. Holland told him that he had information from Lexington about the loss, and would not pay it; that he (Holland) thought that he (plaintiff) burnt the house himself.—Whitehill (the plaintiff) said he would like to have a hearing before the Board of Directors. Holland said that he thought it would not amount to anything. Mr.

133 Holland adjusted losses. Mr. Holland had authority from the Board to determine about the payment of losses. The policy sued on was issued at Peoria on the application here shown to me, marked in my handwriting, No. 10,407, and in the application is the handwriting of plaintiff. The policy was filled up by me. The defendant here read in evidence the application referred to by witness Morrell in words and figures as follows, to-wit:

No. 10,407.

Application of James C. Whitehill, of Lexington, in the County of McLean, in the State of Illinois, for insurance against fire by the Peoria Marine and Fire Insurance Company, of Peoria, for the sum of twenty-five hundred dollars, for the term of two months from the 29th day of March, 1859.

	Estimated Value.	Am't Insured.	Rate per $100.	$.... Premium
On stock, drugs, and other merchandize in trade, inventory of January on 1859, (since which our stock has increased)	$3917 51	$2100		1¼
On surgical instruments	$243 00	$200		
On medical library	$275 00	$200		
	$4435 51	$2500		$5 20

138 Appellant then called G. H. Franklin, who testified that he slept near Whitehill's store at his office; that on Sunday night of the first fire he was aroused by the cry of fire and the report of a gun; got up and went to fire; saw it was Whitehill's store; was almost first one at the fire; Robert was next; about 5, it may be ten minutes of, I got to the fire; Whitehill came; Whitehill and witness talked about fire; Whitehill said he had heard gun and alarm of fire; Whitehill lived about five or six blocks from store.

The defendant then introduced C. H. Preble, who being duly sworn testified as follows: On Saturday, the day before the fire, I went to the store of plaintiff to settle with him; he said his books, or some of his books, were at his dwelling-house; I had seen the books in the store before that time; plaintiff said that he could not then settle with me for the want of his books, or some of them, which were at his house, and he was drawing off accounts, and did not settle my account; had been running about two years.

The defendants then introduced George T. Dement, who testified as follows: I was agent for the defendants in the town of Lexington; the plaintiff applied to
139 me to insure his drug store, but I refused to do so; I told plaintiff that I intended to resign my agency on account of my other business, and that he would have to go to Peoria to get his policy. The fire took place on the first occasion on Saturday night, the second of April, 1859, and there was no alarm created by it, and it apparently died out itself. The second fire occurred on Sunday night, April 3rd, 1859, and was extinguished by the citizens. I went to see the fire and the plaintiff was present; this was on Monday morning. I told plaintiff that I thought the burning fluid had been taken out of the cask and spread over the

building with the counter brush. The plaintiff said that the temperance men had been, as he was told, threatening to burn it; he said the temperance men had threatened him to burn his store. On Friday before the fire the plaintiff told me
140 that he had lost the key to the back door of his store, and wanted to get another of me, but did not get one, as I had none that he said would fit his lock. He said that at the time of the fire his wife was sick, and he had a pain in the bowels, and was up when the fire occurred.

The defendant then called REYNOLDS, who testified that he was a druggist and lived in Lexington, and was one of the appraisers, and knew the stock of drugs insured by plaintiff. Stock of drugs was worth about $2,000; that he would have given that amount for them; that the patent medicines were worth about $500; do not know what the library and surgical instruments were worth; would think the whole worth $3,000.00.

The defendant then called HUNT, who testified that he was brought up a druggist, and was one of the appraisers; that the stock of drugs and patent medicines and furniture in the store were worth about three thousand dollars.

The defendant then called John Fulwiler, who testified that he was the agent of the Illinois Mutual insurance Company; that on the 17th day of March, 1859,
141 plaintiff came to witness to get the building, in which said stock of drugs were, insured in the said Illinois Mutual Insurance Company; got the building insured; policy did not arrive from Alton until Friday before the fire; the plaintiff inquired two or three times of witness if his policy had arrived before it did come to hand; told plaintiff on the Saturday before the fire that the policy had come to hand; witness had a conversation with plaintiff about the fire; plaintiff said that the temperance men had set the building on fire; witness replied that the temperance men would not do such a thing; I was one of the temperance men.

Appellant rested.

Appellee then offerred in evidence a policy of insurance, dated May 29, 1857. —See record, page 141 to page 183. It is not copied in the abstract.

184 JACOB SPAWE called; said he regretted signing the letter written by Dement and sent to defendants, and was now willing to stand by his certificate. M. W. Strager, who states that he was present when Spawe gave plaintiff certificate of loss; Robinson, the agent for defendant, and plaintiff were present; witness told Spawe to put his notarial seal to certificate of loss and affidavit; Robinson said, never mind, the Company will make no objections on that account. J. W. Parly in February, 1859, just before plaintiff moved, helped him take an inventory of stock; does not remember amount, but does remember that patent medicines were in amount from $\frac{1}{3}$ to $\frac{1}{2}$ of whole stock of medicines.

The foregoing was all the evidence offered in the cause both by plaintiff and defendants. Thereupon the plaintiff moved the court to instruct the jury as follows:

1 That if by any open approach to the place of fire the residence of the notary Spawe was nearer than any other notary or magistrate, then his certificate is a sufficient compliance with the clause in the conditions requiring the certificate of a magistrate or notary most contiguous to the place of the fire.

2 That defendant cannot now raise any objections to the preliminary proofs and
185 certificates of loss that were not specifically pointed out to plaintiff at the time of making and obtaining the same, and delivering them to defendant or its agent.

3 That if defendant placed its refusal to pay on the ground that the plaintiff set fire to the building, and did not designate its objections to the preliminary proofs such ground of refusal and failure to point out defects in the proofs is a waiver of any defects in the proofs, and such proofs will be considered as a substantial compliance to the conditions of the policy.

4 That the condition to the policy requiring suit to be brought within one year after the loss or damage occurs is void, and is no bar to the plaintiff's action.

5 That if the jury believe from the evidence that the plaintiff and defendant were negotiating about the plaintiffs loss, and the defendant on its part by such negotiation, delayed plaintiff for a large part of the year following the loss; then, even
186 if the conditions requiring suit to be brought within the year be valid under such circumstances, defendant cannot set up such conditions to defeat plaintiff's suit.

6 That if the defendants by its agents received plaintiff's preliminary proofs of loss under the policy and its conditions the defendant cannot afterwards reject such proof unless it pointed out specifically to plaintiff the defect or omission complained of.

7 That if defendants agent assisted the plaintiff in making out and preparing the proofs of loss, and the inventory and appraisement of damages, and took the same and delivered them to defendant, the defendant cannot now object to any mere formal defects in such proofs.

8 That in order to relieve themselves from liability under their policy on the ground that the plaintiff fired the building in which the goods were, the defendant must prove to the satisfaction of the jury beyond reasonable doubt that plaintiff committed the act or procured it to be done.

9 If the jury believe from the evidence that the plaintiff in good faith believed his stock, books, &c., to be with the amounts represented to the Company, then
187 there is no fraud on plaintiff's part in that respect.

10 That if they believe from the evidence that the defendant insured the stock of drugs, instruments and library of plaintiff against loss or damage by fire, and that the said stock of drugs, instruments and library were damaged by fire during the time for which they were insured, and that plaintiff, on his part, has substantially

187 complied with the conditions of the policy of insurance and used no fraud in obtaining the policy, then the jury will find for plaintiff the amount of such damages proven, unless they further believe from the evidence that plaintiff set fire to the building or goods, or caused the same to be done.

To the giving of all said instructions, the said defendants excepted.

189 And thereupon the defendants requested the court to give the following instructions to the jury:

That it is immaterial in this case whether Whitehill believed his stock of drugs, surgical instruments and library were worth the amount he represented them to be, and if the same were not in fact worth what he stated them to be in his application, and the jury so find from the evidence, they will find for the defendant.

If the jury believe from the evidence that it was one of the conditions annexed to the policy that no suit or action against said defendant by the said plaintiff for the recovery of any claim upon under or by virtue of said policy should be sustained in any court of law or chancery unless such suit should be commenced within the term of twelve months from and after any loss or damage shall occur. And if the jury further believe that this suit was not commenced within twelve
190 months from the time of the fire, then the jury will find for the defendants.

Which the Court refused to give to the jury, to which refusal of the Court the defendants excepted.

The jury found for the plaintiff below. Debt $1056.00. Damages one cent.—Record, page 60.

61 & 190 The defendant below entered a motion for a new trial. Motion overruled and exceptions taken.

62 & 191 The defendant then entered a motion in arrest of judgment. Motion overruled and exceptions taken.—(See record, page 191.) Exceptions properly taken.
64 Judgment for debt $1056.00. Damages 1 cent.

The defendant appealed to this Court, and now assigns the following errors on the record:

1. The Court below erred in admitting proper evidence on the part of appellee.

2. The Court below erred in excluding proper evidence offered by appellant.

3. The Court below erred in giving improper instructions asked by appellee.

4. The Court below erred in refusing to give proper instructions asked by appellant.

5. The Court below erred in overruling the motion to set aside the verdict and to grant a new trial. The verdict was against the law and evidence.

6. The Court below erred in overruling the motion in arrest of judgment.

7. The proof below did not support the allegations in the declaration.

8. The Court below erred in rendering judgment for plaintiff below.

9. The verdict and judgment are informal, improper and unlawful.

10. The verdict and judgment should have been for the defendant below.

11. Other errors.

PLAINTIFF'S POINTS AND BRIEF.

1. The declaration alleges the total destruction of the property on the 3d day of April, 1860. The risk expired May 29, 1859. The proof shows that two fires occurred: the first April 1st, 1859, and the second April 3, 1859.

There is no evidence in the record that a single article was consumed. The proofs did not sustain the declaration.

2 Greenleaf on evidence, page 437, § 405.

2. The instructions given for appellee are not law, especially the one declaring the 15th condition of the policy void.

The record shows the suit was not commenced within a year after the loss.

2 Phillips on insurance, page 618, latter part of Sec. 1984.

3. The instructions asked by appellant should have been given.

2 Phillips on insurance 618, Sec. 1983.
Croy vs. Hartford Fire Insurance Company 1, Blatchford, C. C. Reports 280.

4. The Court should have granted a new trial.

5. The Court below should have arrested the judgment.

1. The time alleged in the declaration that the loss occurred was after the risk expired.

2. The 12th condition provides that payment shall be made in 60 days after sufficient loss has been received by the Secretary. There is no averment in the declaration that any proofs of loss were furnished to the Secretary.

2 Phillips on Insurance, page 617, Sec. 1983.

3. The application is not referred to or set out in the declaration.

See Angell on Fire and Life Insurance, page 437, Sec. 366.
Ellis on Insurance, page 135.

6. The verdict and judgment should have been for the whole amount insured as debt, and the damages the amount of loss sustained:—the contract being one of Indemnity merely.

7. The Judgment should be reversed.

247 - 75

The Penn Marine
Marine & Fire Insurance
Co.

vs

Thos C. Whitehead

Abstract

Filed Apr 17, 1861
L. Leonard
Clerk

The Peoria Marine & Fire Insurance Company Appellant

vs

James C. Whitehill

} In the Supreme Court on appeal

The Peoria Marine & Fire Insurance Company appellant comes and says that in the record proceedings and in the rendition of Judgment in this cause manifest error hath intervened to the injury of appellant and for assignments of errors hereupon the record the appellant shows the following

1 The Court below erred in admitting improper evidence on the part of the appellee

2 The Court below erred in excluding proper evidence offered by appellant

3 The Court below erred in giving improper instructions asked by appellee.

4 The Court below erred in refusing to give proper instructions asked by appellant

5 The Court below erred in overruling the motion to set aside the verdict and to grant a new trial. The verdict was against the law and evidence.

Davis

6 The Court below erred in overruling the motion in arrest of Judgment

7 The proof below did not support the allegations in the declaration

8 The Court below erred in rendering Judgment for Plaintiff below

9 The verdict and Judgment are informal improper and unlawful.

10 The verdict and Judgment should have been for the defendant below

11 Others errors — Appellant therefore prays that the Judgment aforesaid may be reversed set aside & wholly for naught esteemed.

H Grove for appellant.

and the said James C. Whitehill by Orme his Attorneys says that there are no such Errors in the record and proceedings aforesaid as are above complained of — Wherefore &c

W. W. Orme —
for Appellee —

Pleas continued and held at the Court House in Bloomington in and for the County of McLean in the Eighth Judicial Circuit of the State of Illinois before the Hon David Davis Judge of the Circuit Court of said Eighth Judicial Circuit in a certain cause therein pending wherein James L. Whitehill was plaintiff and the Peoria Marine & Fire Insurance Company was defendant =

State of Illinois
McLean County } ss. Be it remembered that heretofore to wit on the 27th day of July A.D. 1860 came James L. Whitehill by Scott & Orme his attorneys and filed in the office of the Clerk of the Circuit Court of said County a Praecipe and Bond for costs in words and figures as follows to wit =

State of Illinois } ss. Of the September Term 1860
McLean County } of McLean Circuit Court
James L. Whitehill

vs

The Peoria Marine & Fire Insurance Company

In Debt = Debt $ 2500
Damages 1100

The Clerk will issue process &c
Scott & Orme Atty's

3.

James L. Whitehill

vs. McLean Circuit Court

The Peoria Marine and Fire Insurance Company -

I do hereby enter myself security for costs in the above cause and acknowledge my self bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State =

Dated this 21st day of July 1860 =

William W. Orme

And thereupon there issued out of said Clerks office a writ of Summons directed to the Sheriff of said County to execute which said Summons was in words and figures as follows to wit =

State of Illinois
McLean County } The People of the State of Illinois

To the Sheriff of said County Greeting

We command you to summon The Peoria Marine and Fire Insurance Company if found in your County personally to appear before the Circuit Court of said County of McLean on the first day of the next term thereof to be holden at the

5

Court House in Bloomington on the first monday in the month of September next to answer unto James L. Whitehill in a plea of Debt that it render unto the said James L. Whitehill the sum of Twenty four hundred dollars which to him it justly owes and from him unjustly detains to his damage Eleven hundred dollars as he says= And have you then and there this writ and make return thereon in what manner you execute the same

Witness Wm McCullough Clerk of said Circuit Court and the seal thereof hereto affixed at Bloomington this 27th day of July A.D. 1860 -

(L.S.)

Wm McCullough Clerk

By L Burr Dept.

Which said summons was by the ~~Clerk~~ Sheriff of said County returned into said Clerks office endorsed as follows to wit=

"I have on this 13th day of August A.D. 1860 duly executed the within writ by delivering a true copy of the same to B.W. Lewis and E. Lacy who are agents of the within named defendant The President and chief officers of the said Peoria Marine and Fire Insurance

7 Company not residing or being found in
my County=

Fees of Service $1.10 W. P. Withers Shff
Copies 1.00 By L. E. Rucker Dpty
Milage .10
$2.20

And thereupon afterwards to wit on the 24th
day of August A.D. 1860 came the said James
L. Whitehill by his attorneys and filed in said
Clerks Office his declaration against the said
defendant in words and figures as follows
to wit=

L State of Illinois
McLean County ss. In the McLean County Circuit
Court= September Term A.D. 1860-

James L. Whitehill Plaintiff in
this suit by his attorneys complains of the Peoria
Marine and Fire Insurance Company of
Peoria Ills the defendant in plea of debt= For
that whereas the said Peoria Marine and Fire
Insurance Company the defendant aforesaid
heretofore to wit on the 29th day of March A.D.
1859 at Peoria Illinois to wit= at the County
and State aforesaid by a certain deed poli-
policy of Insurance then and there made
by the said Company and sealed with the

9 lemmon seal thereof and which said deed or policy of Insurance made executed and sealed with the seal of said lempa- as aforesaid and delivered to said plaintiff the said plaintiff now brings into Court here and which said deed or policy of Insurance is in words and figures following to wit =

"Number 10407. Rate 1¼

Amt Ins'd $2500. Premium $5.20

The Peoria Marine and Fire Insurance lempany = Peoria Illinois = By this policy of Insurance the Peoria Marine and Fire Insurance lempany in consideration of Five 20/100 dollars to them paid by the assured herein after named the receipt whereof is hereby acknowledged do insure James C. Whitelee Lexington Ill against loss or damage by fire to the amount of Twenty five hundred dollars —

$2100 = On his Stock of drugs and other merchandise $200 = On Surgical Instruments = $200. on medical Library = all contained in a Wood building occupied as a Drug Store - One story high - Situated in the Town of Lexington Illinois. Permission to keep for sale, Alchohol, Burning Fluid Camphene and Turpentine but not to sell the same by open lights Also permission to

11 use Kamphene and Fluid lamps: but to be
thoroughly cleaned every day and to trim
and fill the same in all cases by daylight
All as particularly described in the application
of the assured numbered 10407 on file in
the office of this Company said application
shall ~~be~~ form part of the Contract to be taken
in connection with this policy and a warran
ty on the part of the assured And the said
Company do hereby promise and agree to make
good unto the said assured his executors ad-
ministrators or assigns all such immediate
loss or damage not exceeding in amount
the sum insured as shall happen by fire
to the property as above specified from the
29th day of March One Thousand Eight hun-
dred and fifty nine (at 12 O'clock at noon
unto the 29th day of May One Thousand
Eight hundred and fifty nine (at 12 O'Clock
at noon) the said loss or damage to be es-
timated according to the true and actual
cash value of the property at the time the
same shall happen and to be paid within
Sixty days after notice and proof thereof made
by the assured in conformity to the conditions
annexed to this policy =

12 Provided always and it is hereby declared that this Company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion insurrection riot or civil commotion or of any military or usurped power or any loss by theft at or after a fire And provided further that in case the assured shall have already any other insurance against loss by fire on the property hereby insured and not notified to this company and mentioned in or indorsed upon this policy then this insurance shall be void and of no effect And if the said insured or his assigns shall hereafter make any insurance on the same property and shall not give notice thereof to this Company and have the same indorsed on this instrument or otherwise acknowledged by them in writing this Policy shall cease and be of no further effect And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above mentioned sum or sums shall at any time after making and during the continuance of this insurance be appropriated applied or used to or for other the purpose of carrying on or exercising

therein any trade business or vocation denominated hazardous, extra hazardous or included in the memorandum of Special rates in the conditions annexed to this policy or for the purpose of storing or vending therein any of the articles goods or merchandise in the conditions aforesaid denominated hazardous extra hazardous or included in the memorandum of special rates unless herein otherwise specially provided for or hereafter agreed by this Company in writing or added to or indorsed upon this Policy then and from thenceforth so long as the same shall be so appropriated applied or used these presents shall cease and be of no force or effect And it is moreover declared that this insurance is not intended to apply to or convey books of account written securities deeds or other evidences of title to lands nor to bonds bills notes or other evidences of debt nor to money or bullion And that this Policy is made and accepted in reference to the conditions hereto annexed which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for

15

17 In Witness Whereof the Peoria Marine and Fire Insurance Company have caused these presents to be signed by their President and attested by their Secretary in the City of Peoria and State of Illinois this 29th day of March 1859—

L.S. Chas Holland Secretary

Isaac Nudall
President "

Conditions of Insurance referred to in the Foregoing Policy—

"1 Goods not hazardous are such as are usually kept in Dry Goods Stores including Coffee Flour Household Furniture and Linen Indigo Rice Spices Sugar Teas and other articles not combustible =

11= The following trades and occupations goods wares and merchandise are denominated hazardous viz = Alchohol Basket Sellers Brush makers Stock Cabinet furniture China Earthen Glass ware or plate glass in boxes crates or casks Copper plate printers Cotton in bale Hat finishers (without use of fire except for heating their irons) Hardware and cutlery Jewelers Stock Liquor in glass unpacked

19 Looking Glasses in boxes ~~crates or casks~~ Manilla
grass in bales Paints in ground oil Paper hang-
ings Porter Houses Potash, Pocket book makers stock
Printers of newspapers, Rags in packages Sail
makers Ship Chandlers, Spirituous liquors,
Sugar Makers Stationers stock Snuff makers
Shelled grain Tin or sheet iron workers Vic-
tualing houses Watchmakers Stock and tools
Wine in glass or packages Window or plate
Glass in packages =

111= The following trades and occupations goods
ways and merchandise are denominated extra
hazardous viz = Basket makers Straw bleachers
Book sellers Stock Blacksmiths Boat Builders
Brassfounders China Earthen or Glass ware or
looking Glasses unpacked Confectioners Stock
Cotton unpacked Coopers Copperamiths Druggists
and Apothecaries Fur dressers Flax in bales
Grunge makers Gun makers or Smiths Gratema-
kers Hay pressed in bundles Hemp in bales
Ink makers Lamp manufacturers Lamp sellers
stock Lithographers Milliners Stock Morocco
Manufacturers Optical and Mathematical
Instrument makers Painters stock Perfumers
stock Shop houses Pictures and Prints Printers
of books and Jobbing Plates and Plated ware

21 manufactories Pocket book makers Plumbers and Pewterers Saltpetre Silver Smiths Stables (private) Spirits of Turpentine Stove manufacturers, Tobacco manufacturers Toy keepers stock Types or Stereotype manufacturers Varnish Window Glass and plate glass unpacked

IV= Mem. of Special Rates -

Bakers, Bark mills Blind makers Breweries Book Binders, Book Binders Stock Boat builders Blacksmiths Cabinet makers Carpenters Joiners, Chair or Coach makers work shops, Chemists Cotton mills Dyers Forges Fences Frame makers Furriers Fulling mills Grist mills, Hat manufactories House building or repairing, Ink or Ivory black or Lamp-black manufactories Livery Stables Lumber or Mahogany yards Malt houses Metal and other Mills of all kinds Musical instrument makers Oil Makers, Pump and block makers shops Paper mills Rope makers Saw mills Ship builders Stock in the yard Ship or other vessels in port or their cargoes or when building or repairing Steam engines or boats, Sugar Refiners Tanneries Tallow Melters or Chandlers Timber Yards, Woolen Mills and generally all manufacturing establishments and

all trades requiring the use of fire heat or
2.3 steam known not before enumerated
Brimstone works. Fire works Distilleries
Flax mills Gunpowder Oil boiling Houses
Oakum factories Panoramas or other Sce-
nic Paintings Patent Leather Manufactories
Sash or Sash and blind factories Snuff
Mills Steam Planing Mills Tar boiling
houses, Theatres Turpentine manufactories Varnish
makers Wood Shavings, Paper Shavings -

IV½ Applications for insurance must specify
the construction and materials of the building
to be insured or containing the property to be
insured by whom occupied whether as a private
dwelling or how otherwise its situation with respect
to contiguous buildings and their construction
and materials whether any manufactory is
carried on within or without it and in case
of goods and merchandise whether or not
they are of the description denominated haz-
ardous extra hazardous or included in the
memorandum of Special rates Any misrep-
resentation or concealment of facts or circum-
stances concerning the risk on the part of the
assured or false description by the assured

of a building and its contents or the omission to
25 make known any fact or rumor material to the
risk or in a valued policy of an overvaluation shall
render absolutely void a policy issued upon such
description or valuation If after the insurance is
effected either by the original policy or by the re
newal there of the risk be increased by any means
or occupied in any way so as to render the risk
more hagardous than at the time of insuring,
such insurance shall be void and of no effect
If during the insurance any subsequent insur-
ance should be made upon the property hereby
insured or the risk be increased by the erection of
buildings or by the use or occupation of neighboring
premises or otherwise or if for any other cause the
Company shall so elect it shall be optional with
the Company to cancel this policy in which case the
Company will refund the premium for the unexpired
time

V. No insurance whether original or continued
shall be considered as binding until the actual
payment of the premium=

VI. Goods held in trust or on commission are
to be insured as such otherwise the ~~property~~ policy
will not cover such property and in case of loss
the names of the respective owners shall be

set forth in the preliminary proof of such loss together with their respective interest therein Goods on storage must be separately and specially insured

VII. Policies of insurance subscribed by this Company shall not be assignable without the consent of the Company expressed by indorsement made thereon in case of assignment without such consent whether of the whole policy or of any interest in it the liability of the Company in virtue of such policy shall thenceforth cease. And in case of any such transfer or change of title in the property insured by this Company or of any undivided interest therein such insurance shall be void and cease -

VIII. This Company will not be liable for damage to property by lightning nor by fire nor for damage occasioned by the explosion of a steam boiler nor for damages by fire resulting from such explosion unless otherwise expressly provided

The keeping of gunpowder or fire works for sale or on storage or the lighting of the same by Camphene or Spirit gas upon or in the premises insured without written permission in the policy shall render it void and this Company will not be liable for any loss caused by the gross wanton misconduct or culpable negligence of

the assured or by means of his intoxication =

28 IX. Jewels, watches plate musical instruments paintings statuary sculptures and curiosities are not deemed to be included in any insurance unless an inventory thereof accompany the application for insurance or is inserted in the policy

X. In case of fire or loss or damage thereby or of exposure to loss or damage thereby it shall be the duty of the assured to use all possible diligence in saving and preserving the property And if they shall fail to do so this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect and there can be no abandonment of the premises =

XI= All persons insured by this Company and sustaining loss or damage by fire are forthwith to give notice thereof to the Company or its agent and as soon after as possible to deliver in a particular account of such loss or damage signed with their own hands and verified by their oaths or affirmation they shall also declare on oath whether any and what other insurance

has been made on the same property what
30 was the whole value of the subject insured
what was their interest therein in what general
manner (as to trade manufactory merchan-
dise or otherwise) the building insured or con-
taining the subject insured and the several
parts thereof were occupied at the time of the loss
and who were the occupants of such building
and when and how the fire originated so far
as they know and believe and procure a cer-
tificate under the hand of a magistrate or
notary public (most contiguous to the place of
fire, and not concerned in the loss as a cred-
itor or otherwise or related to the insured or
sufferers) that he is acquainted with the char-
acter and circumstances of the person or per-
sons insured and has made diligent in-
quiry into the facts set forth in their state-
ment and knows or verily believes that he
she or they really and by misfortune and
without fraud or evil practice hath or have
sustained by such fire loss and damage to
the amount therein mentioned; and also if
required shall produce their books of account
and other proper vouchers and shall also
if required submit to an examination

under oath by the agent or attorney of the Com-
32 pany and shall answer all questions touching
his her or their knowledge of any thing relating to
such loss or damage or to their claim thereupon
and subscribe such examination the same
being reduced to writing and until such proofs
declarations and certificates are produced and
examination if required the loss shall not be
deemed payable Also if there appear any
fraud or false swearing the insured shall
forfeit all claim under this policy. Damage
to buildings not totally destroyed shall be
appraised by disinterested men mutually
agreed upon by the assured and the Company
or its agents and where merchandise or other
personal property is partially damaged the
insured shall forthwith cause it to be put in
as good order as the nature of the case will
admit assorting and arranging the various
articles according to their kind and shall cause
a list or inventory of the whole to be made
naming the quantity and cost of each kind
The damage shall then be ascertained by the
examination and appraisal of said dam-
age on each article by disinterested appraisers
mutually agreed upon whose detailed report

in writing shall form a part of the proofs required to be furnished by the claimant one half
34 of the appraisers fees to be paid by the insurers
A copy of the policy to be given in the affidavit
of the claimant in all cases

XII. Payments of losses shall be made in
Sixty days after sufficient proof has been re-
ceived by the Secretary in writing and in case
difference shall arise touching any loss or dam-
age it may be submitted to the judgement of
arbetrators indifferently chosen whose awards in
writing shall be binding on the parties In case of
any loss or damage to the property insured it
shall be optional with the Company to replace
the articles lost or damaged with others of the
same kind and equal goodness and to re-
build or repair the building or buildings and
if no notice is received by the Company of a
loss within sixty days after it occurred it
shall be optional with the Company to reject
or allow the claim or any part thereof=

XIII= Insurance once made may be con-
tinued for such further term as may be agreed
on the premium thereon being paid and a

36 renewal receipt being given for the same signed by the President and Secretary and it shall be considered as continued under the original warranty inso far as it may not be varied by a new warranty in writing which in all cases it shall be incumbent on the party insured to make when the risk has been changed either within itself or by the surrounding or adjacent buildings =

XIV. When a policy is made and issued upon a survey description of certain property such survey and description ~~as paid~~ shall be taken and deemed to be a part and portion of such policy and warranty on the party of the insured

XV Where property insured by this Company is damaged by removal from a building in which it is exposed to fire said damage shall be borne by the insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured of which proof in due form shall be made by the claimant =

XVI - The Company will not be answerable for any loss arising from the use of fire in

38 buildings unprovided with good substantial stone or brick chimney or in consequence of neglect or of deviations from the laws or regulations of police made to prevent accidents by fire in places where laws or regulations on the subject exist=

XVII= It is furthermore hereby expressly provided that no suit or action against said company for the recovery of any claim upon under or by virtue of this policy shall be sustainable in any court of law or chancery unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur and in case any suit or action shall be commenced against said Company after the expiration of twelve months next after such loss or damage shall have occured the lapse of time. shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced — "

In

Witness Whereof the said Peoria Marine and Fire Insurance Company the defendant aforesaid caused their common

40 Seal to be thereunto affixed and the sum of and sums by the said Peoria Marine and Fire Insurance Company insured to be therein written And thereupon the said Peoria Marine and Fire Insurance Company defendant aforesaid became insurer to the said plaintiff for the said sum of $2500 in the said deed or policy of insurance And the said plaintiff further says that at the time of the fire hereinafter mentioned he was the owner of the goods to wit = divers drugs and medicines Surgical Instruments and Medical Library and other articles usually kept in a drug store, of great value, to wit = of the value of $5000 contained in a certain wooden building occupied and used by him as a drug store in the Town of Lexington Illinois aforesaid being the same described in the deed or policy herein before set forth and which said building or store house on the night of Sunday the 5th day of April A.D. 1868 by accident took fire or was set on fire by some cause or person unknown to plaintiff and was not burned by fire ~~by~~ occasioned by any invasion or otherwise as excepted in said policy and the said storehouse or building

42 with the said drugs and medicines Surgical Instruments and Medical Library and other articles all contained and in the said building was then and there burned consumed and forever destroyed of all of which said premises the said Peoria Marine and Fire Insurance Company afterwards to wit= on the 15th day of April AD1859= there had notice =

[And said plaintiff avers that he fully complied with the said policy and the conditions thereof on his part to be kept and performed and did forthwith on the happening of said fire as aforesaid to wit within sixty days thereafter to wit on the day succeeding the fire gave notice thereof to said Company the said defendant and did as soon thereafter as possible deliver in a particular account of the loss and damage, subscribed by him and verified by his oath and did procure the necessary certificate from a Notary Public most contiguous to the place of fire and did otherwise fully and perfectly comply with and perform all the terms and conditions in said policy on his part to be complied with and performed— and did every act required to be done by him and was ready and willing to do any act required

44 of him at the request of said defendant under the terms of said policy and the conditions annexed of all which said defendant had notice and although the time for the payment by said defendant of said loss has fully expired yet the said defendant did not nor would pay said loss under said policy or any part thereof by reason whereof an action hath accrued to said plaintiff to demand and have from the said defendant the sum of $2500. parcel of the sum above demanded]#
And whereas also the said defendant afterwards to wit on the first day of April A.D. 1860 at the County and State aforesaid was indebted to said plaintiff in the sum of fifty dollars for so much money paid laid out and expended by plaintiff for defendant at its request And in the like sum of $50. for so much money had and received by said defendant to and for the use of said plaintiff - And in the sum of $2500. for so much money found to be due and in arrear from said defendant to said plaintiff on account then and there stated between them yet the said defendant although often requested has not paid the said sums of money above demanded or any part thereof but refuses so to do to the damage of said plaintiff of $1100 Wherefore he sues &c by Swett & Ome atty

46

Account Sued on

The Peoria M & F. Ins. Co.

To J. C. Whitehill Dr

To loss or damage under policy $1200.

" money paid 50.

" money had & rec'd 50.

" balance on account stated 1200.

And afterwards at the September Term of said Circuit Court to wit on the 7th day of September A.D. 1860 this cause being called the following order was made herein as appears of record to wit=

James C. Whitehill

5033 vs In Assumpsit

The Peoria Marine & Fire Ins Co

And now at this day comes the said plaintiff by his attorneys and it appearing to the satisfaction of the Court that said defendants have been duly served with process herein at least ten days prior to the first day of the present Term of this Court. And said defendants being three times solemnly called came not but herein wholly make default It is thereupon adjudged by the Court that said plaintiff ought to recover the said debt and his Declaration

48 mentioned and also damages consequent upon the detention thereof. But the amount of said damages being unknown to the Court it is ordered that a writ of Inquiry issue for the assessment thereof=

And thereupon afterwards at said September Term of said Court to wit on the 12th day of September A.D. 1860 further proceedings were had in this cause as appears of record to wit

James C. Whitehill

vs

The Peoria Marine & Fire Ins Co

In Debt -

And now at this day come the said defendants by their attorney and move the Court to set aside the default herein before entered against them and presents to the Court an affidavit in support of said motion

And the Court having heard said motion and being fully advised in the premises doth order that the default herein before entered against said defendants be set aside and wholly held for nought upon the payment of the costs of this term and that said defendants plead to the merits of this cause -

50

And afterwards to wit on the 12th day of ~~March~~ November A.D. 1856 came the said defendant by W.H. Holmes its attorney and filed herein its Demurrer to the said plaintiffs Declaration which demurrer was in words and figures as follows to wit

State of Illinois } Circuit Court
McLean County }

The Peoria Marine &
Fire Ins Company

adv

James C. Whitehill } Debt —

And the defendants by their Atty came &c and say that the matters & things charged in the plaintiffs Declaration are not sufficient in law for him to have & maintain his aforesaid action in that behalf — Wherefore for want of a sufficient Declaration in that behalf — Wherefore he prays Judgement &c

W.H. Holmes
— Defts Atty —

And afterwards to wit on the 10th day of December A.D. 1856 came the said Defendant by its Attorney and filed herein its plea and a notice under the same which plea

52, and notice were in words and figures as follows to wit

State of Illinois } ss — Circuit Court —
McLean County }

The Peoria Marine & Fire Insurance Company

ads

James L. Whitehill — In Debt —

And the said defendant by Wm H. Holmes its attorney comes & defends &c And says that the defendant does not owe the said sum of $2500.00 or any part thereof to said plaintiff & of this he puts himself upon the country

Wm H. Holmes
Atty for Defft —

The plaintiff will take notice that upon the Trial of this cause the defendant will know & insist upon as his defence — That by the conditions of Insurance referred to (No XVII) in the said policy of insurance mentioned & set forth in the said plaintiffs declaration & which conditions are annexed to & form a part of said policy of insurance it is expressly provided that no suit or action against said Company (said plaintiffs meaning) for the

54 recovery of any claim upon or under or by virtue
of said policy should be sustainable in any
Court of Law or Chancery unless such suit or ac-
tion should be commenced within the term of
twelve months next after any loss or damage
should occur and in case any such suit or
action should be commenced against said
Company after the expiration of twelve months
next after such loss or damage shall occur
the lapse of time shall be taken and deem-
ed as conclusive evidence against the val-
idity of the claim thereby attempted to be
enforced And the plaintiff avers & will
prove that said supposed damage & loss by
fire in the plaintiffs declaration mentioned
(if any there was) did occur more than
twelve months next before the commence-
ment of this suit The defendant will also
show & give in evidence that said fire occurred
through the fault & negligence of the plaintiff
his agents & servants - That the fire occurred
through the wrongful acts of the plaintiff That
the plaintiff at the time of the fire was present
& did not use all possible diligence in sa
ving the property destroyed (X)

That after said loss occurred

576 the said plaintiff did not notify the Secretary of the Company in writing of said loss as is provided for in condition No XII - of said policy of Insurance aforesaid

That the plaintiff has never as required by condition No 11 of his said policy of Insurance made his proofs of loss. That the certificate of Jacob Spaur the Notary Public given to the plaintiff and annexed to the affidavit of the plaintiff & dated 11th April 1859 was obtained by the plaintiff by misrepresentation & fraud & is untrue in fact That a certificate was not ~~to~~ obtained from the most contiguous Magistrate Justice of the peace or Notary Public to the place of the fire=

And thereupon afterwards at the regular December Term of said McLean Circuit Court began and held at Bloomington in said County on the 10th day of December AD 1860 -

Present -

Hon David Davis

Presiding Judge

Wm McCullough Clerk

- John L. Routt Sheriff -

among the proceedings of said Court were

578 the following to wit =

Friday January 18. 1861

Court met pursuant to adjourn-

ment =

James L. Whitehill

vs

The Peoria Marine & Fire Insurance Company } Debt

And now at this day comes the said Plaintiff by Leavitt & Acme his attorneys And also comes the said Defendant by Hanna Scott & Holmes its attorneys And this cause now coming on for ~~a further hearing~~ trial upon the issues joined between the parties there upon came a jury twelve good and lawful men to wit = E. W. Dawson George W. Roberts, Samuel L. Cooper Milton Gaffe David S. Lewis John Lewey Thomas Gauman Allen Hendrix John C. Virden Henry C. Bishop & Rufus C. Littlefield who being duly examined elected and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence

And having heard the evidence produced before them and the arguments of Counsel and the instructions of the Court upon their oaths do say that they find the issues for the plaintiff

60 ~~for~~ and assess his debt at One Thousand and fifty six dollars and forty one cents And they assess the damages of said plaintiff at one cent And now comes the said defendant by its attorneys and moves the Court to set aside the verdict of the Jury aforesaid and to grant a new trial of this cause-

And thereupon afterwards at said December Term of said Court to wit on the 22 day of January A.D. 1861 came the said defendant by its attorneys and filed herein its motion for a new trial and motion in arrest of Judgement which said motions were in words and figures as follows to wit =

James le Whitmire
vs
The Peoria Marine & Firedns Co.

In the McLean Circuit Court = In Debt -

And the said defendant move the Court now here to set aside the verdict herein and grant a new trial for the following reasons = 1st That the Court erred in admitting improper evidence offered on the part of the said plaintiff = 2nd That the Court erred in giving improper instructions for the plaintiff to the jury & refusing proper instructions asked

62

for by the defendant

Hannar Scott for Deft

James C. Whitehill

vs

The Peoria Fire & Marine Ins Co

In the McLean Circuit Court In Debt -

The said defendants move the Court in arrest of the judgement on the verdict in the above cause for the reason - Shows That the plaintiffs declaration affirmatively shows that the plaintiff has no cause of action as to the first count & as to the second count that no evidence was offered on the trial that could properly apply to the second count

Hannar & Scott for Defts

And thereupon afterwards at said December Term of said Court to wit on the 25th day of January A.D. 1861 said motions for a new trial and in arrest of Judgement came on to be heard before said Court and final Judgement was rendered therein as appears of record in words and figures as follows to wit=

James C. Whitehill

vs

The Peoria Marine & Fire Insurance Company

In Debt

64

And now at this day again come the parties hereto by their attorneys and the Court having heard the motion for a new trial herein before entered doth consider that the same be overruled And now said defendant by its attorney enters its motion in arrest of Judgement in this cause And this cause coming on to be heard on said motion is argued by counsel, and the Court being fully advised in the premises doth overrule said motion It is therefore considered by the Court that said James L. Mitchell recover of and from the said Peoria Marine & Fire Insurance Company the sum of Seven hundred and fifty six dollars and forty one cents his said debt and the sum of One cent his said damages and also his costs herein expended and that he have execution therefor-

And thereupon on said 25th day of January A.D. 1861 came the said defendant by its attorneys and presented to the Court its Bill of Exceptions to the ruling of the Court in this cause which bill of exceptions was signed and sealed by the Court and ordered to be made part of the record of this cause and said Bill of exceptions was in words and figures as follows

64

to wit=

State of Illinois } In the McLean Circuit Court
McLean County } December Term A.D. 1859

James L. Whitehill

vs

The Peoria Marine & Fire Insurance Company } In Debt

Be it remembered that on the trial of the above cause the plaintiff to maintain the issues on his part introduced in evidence a policy of Insurance & conditions annexed thereto in the words and figures following to wit=

Number 10407 Rate 1/4

Amt Ins'd $2500.00. Premium $ 5.70

Peoria Marine & Fire Insurance Company

— Peoria Illinois —

By this Policy of Insurance= The Peoria Marine and Fire Insurance Company In consideration of Five 20/100 Dollars to them paid by the assured hereinafter named the receipt whereof is hereby acknowledged do insure James L. Whitehill Lexington Ill against loss or damage by fire to the amount of Twenty five hundred dollars= $21.00 on his Stock of Drugs and other merchandise= $200 on surgical Instruments $ 200.

This policy cancelled from April 11th 1859 and $4.00 returns premiums has been issued

W. F. Coburn Agt

68

on Medical Library all contained in a wood building occupied as a drug Store one story high situated in the Town of Lexington Illinois, Permission to keep for sale alchol burning fluid Camphene & Turpentine but not to sell the same by open lights Also permission to use Camphene and Fluid Lamps But to be thoroughly cleaned every day and to trim and fill the same in all cases by daylight

All as particularly described in the application of the assured numbered 10407 on file in the office of this Company said application shall form part of the Contract to be taken in connection with this policy and a warranty on the part of the assured And the said company do hereby promise and agree to make good unto the said assured his executors administrators or assigns all such immediate loss or damage not exceeding in amount the sum insured as shall happen by fire to the property as above specified from the 29th day of March One Thousand Eight hundred and fifty nine (at 12 Oclock at noon) unto the 29th day of May One Thousand Eight hundred and fifty nine (at 12 Oclock at noon) the said loss or damage to be estimated according to the true

40 and actual cash value of the property at the time the same shall happen and to be paid within Sixty days after notice and proof thereof made by the assured in conformity to the conditions annexed to this Policy Provided always and it is hereby declared that this Company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion insurrection riot or civil commotion or of any military or usurped power or any loss by theft at or after a fire And Provided further that in case the assured shall have already any other insurance against loss by fire on the property hereby insured and not notified to this Company and mentioned in or indorsed upon this Policy then this insurance shall be void and of no effect, And if the said insured or his assigns shall hereafter make any insurance on the same property and shall not give notice thereof to this Company and have the same indorsed on this instrument or otherwise acknowledged by them in writing this policy shall cease and be of no further effect And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above mentioned premises shall

72 at any time after making and during the continuance of this insurance to be appropriated applied or used to or for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous extra hazardous or included in the memorandum of special rates in the conditions annexed to this policy or for the purpose of storing or vending therein any of the articles goods or merchandise in the conditions aforesaid denominated hazardous extra hazardous or included in the memorandum of Special rates unless herein otherwise specially provided for or hereafter agreed by this Company in writing added to or indorsed upon this policy then and from thenceforth so long as the same shall be so appropriated applied or used then these presents shall cease and be of no force or effect= And it is moreover declared that this insurance is not intended to apply to or cover any books of account written securities deeds or other evidences of title to lands nor to bonds bills notes or other evidences of debt nor to money or bullion. And that this policy is made and accepted in reference to the conditions hereto annexed which are to be used and

54 resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for In Witness Whereof the Peoria Marine and Fire Insurance Company have caused these presents to be signed by their president and attested by their Secretary in the City of Peoria and State of Illinois this 29th day of March 1859

Chas Holland Secretary

Isaac Underhill President

(S.)

Conditions of Insurance referred to in the foregoing Policy –

Goods not hazardous are such as are usually kept in Dry Goods Stores including Coffee Flour Household Furniture and Linen Indigo Rice Spices Sugar Teas and other articles not combustible – ~~Tea~~

2 The following trades and occupations goods wares and merchandize are denominated hazardous viz Alchohol Basket Sellers Brush makers stock, Cabinet furniture China Earthen or Glass ware or Plate Glass in boxes crates or casks Copper plate Printers Cotton in Bales Hat finishers (without use of fire except

96 for heating, Hoffs Irons) Hardware and Cutlery Jewelers Stock Liquor in glass unpacked, Looking Glasses in Boxes Manilla Grass in bales, Paints ground in oil, Paper hangings, Porter houses Potash, Pocket book makers stock, Printers of Newspapers, Rags in packages, Sail makers Ship Chandlers, Spirituous Liquors, Sugar makers Stationers stock, Snuff makers, Thrashed grain Tin or sheet Iron workers, Victualing houses Watchmakers stock and tools, Wine in glass or packages, Window or plate glass in packages-

3. The following trades and occupations goods wares and merchandise are denominated extra hazardous viz- Basket makers Straw bleachers Book sellers Stock Blacksmiths, Boat builders Brassfounders China Earthen or Glass ware or looking glasses unpacked Confectioners stock Cotton unpacked Coopers Coppersmiths Druggists and Apothecaries Fur dressers Flax in bales, Hinge makers Gun makers or smiths, Grate makers, Hay pressed in bundles, Hemp in bales, Ink makers, Lamp manufacturers Lamp sellers stock Lithographers, Millinery Stock Musical Manufacturers, Optical and Mathematical

78. Instrument makers, Painters Stock, Perfumers Stock Phosphorous, Pictures and Prints Printers of Books and Jobbing, Plates and Plated ware manufactories Pocket book makers Plumbers and Pewterers Saltpetre Silver Smiths Stables (private) Skins of Gunpentine Stove manufacturers, Tobacco manufacturers, Toy Keepers Stock, Typer or Stereotype manufactures Varnish Window and Plate Glass unpacked

4. Mem. of Special Rates. Bakers Bark mills Blind makers Breweries Book Binders stock Boat builders Blacksmiths Cabinet makers Carpenters, Joiners, Chair or Coach makers work shops Chemists, Cotton mills, Dyers Forges, Fences, Frame makers, Furriers, Fulling mills, Grist mills, Hat manufactories, ~~Livery Stables~~ House building or repairing Ink or Ivory black or Lampblack manufactories Livery Stables Lumber or mahogany yards Malt houses, Metal ~~mills~~ and other mills of all kinds, Musical Instrument makers, Oil makers, Pump and block makers Shops Paper mills Ropemakers, Saw mills Ship builders stock in the yard Ships or other vessels in port or their cargoes or

80 when building or repairing Steam Engines or Boats Sugar refiners Tanneries Yallow metters or Chandlers Timber Yards Woolen mills and generally all manufacturing establishments and all trades requiring the use of fire heat or steam power not before enumerated –
Brimstone works Glue Works Distilleries, Flax mills, Gunpowder, Oil boiling houses, Oatum factories, Panoramas or other Scenic Paintings Patent Leather manufactories Sash or Sash and Blind factories, Snuff mills Steam planing mills, Tar boiling houses Theatres Turpentine manufactories, Varnish makers Wood shavings, Paper Shavings –

4/– Applications for insurance must specify the construction and materials of the building to be insured or containing the property to be insured by whom occupied whether as a private dwelling or how otherwise, its situation with respect to contiguous buildings and their construction and materials whether any manufactory is carried on within or without it and in case of goods and merchandise whether they are of the description denominated hazardous extra hazardous or included in the memorandum of Special rates Any misrepresentation or conceal

ment of facts or circumstances concerning the
82 risk on the part of the assured or false description by the assured of a building and its contents or the omission to make known any fact or rumor material to the risk or in a valued policy of an over valuation shall render absolutely void a policy issued upon such description or valuation If after insurance is effected either by the original policy or by the renewal thereof the risk be increased by any means or occupied in any way so as to render the risk more hazardous than at the time of insuring such insurance shall be void and of no effect If during the insurance any subsequent insurance should be made upon the property hereby insured or the risk be increased by the erection of buildings or by the use or occupation of neighboring premises or otherwise or if for any other cause the Company shall so elect it shall be optional with the Company to cancel this policy in which case the company will refund the premium for the unexpired time =

5. No insurance whether original or continued shall be considered as binding

84 until the actual payment of the premium -
= 6= Goods held in Trust on or commission are
to be insured as such otherwise the policy
will not cover such ~~policy~~ property and in
case of loss the names of the respective owners
shall be set forth in the preliminary proof of
such loss together with their respective interest
therein. = Goods on storage must be separate
ly and specifically insured -

-7- Policies of insurance subscribed by this
company shall not be assignable without
the consent of the Company expressed by in-
dorsement made thereon in case of assign-
ment without such consent whether of the
whole policy or of any interest in it the li-
ability of the Company in virtue of such policy
shall thenceforth cease. And in case of any
such transfer or change of title in the prop-
erty insured by this Company or of any in-
dividual interest therein such insurance shall
be void and cease

-8- This company will not be liable for damage to
property by lightning or for damage by fire nor for dam-
age occasioned by the explosion of a steam boiler

nor for damage ~~occasioned~~ by fire resulting from
8 ℓ such explosion unless otherwise expressly provided
The keeping of gunpowder or fire works for sale
or on storage upon or in the premises insured
or the lighting of the same by camphene or
Spirit gas without written permission in the
policy shall render it void and this Company
will not be liable for any loss caused by the
gross wanton misconduct or culpable neg-
ligence of the assured or by means of his intox-
ication

— 9 — Jewels, watches, plate, musical instruments
paintings statuary & sculptures and curiosities
are not deemed to be included in any insur-
ance unless an inventory thereof accompany
the application for insurance or is inserted in
the policy

— 10 — In case of fire or loss or damage thereby or
of exposure to loss or damage thereby it shall
be the duty of the assured to use all possible
diligence in saving and preserving the prop-
erty And if they shall fail to do so this Compa-
ny shall not be held answerable to make
good the loss and damage sustained in

consequence of such neglect; and there can be
88 no abandonment of the premises -

-11- All persons insured by this Company and sustaining loss or damage by fire are forthwith to give notice thereof to the Company or its agent and as soon after as possible to deliver in a particular account of such loss or damage signed with their own hands and verified by their oath or affirmation they shall also declare on oath whether any and what other insurance has been made on the same property what was the whole value of the subject insured what was their interest therein in what general manner (as to trade manufactory merchandise or otherwise) the building insured or containing the subject insured and the several parts thereof were occupied at the time of the loss and who were the occupants of such building and when and how the fire originated so far as they know and believe and procure a certificate under the hand of a magistrate or notary public (most contiguous to the place of fire and not concerned in the loss as a creditor or otherwise related to the insured or sufferers) that he is acquainted with the character and circumstances

of the know or persons insured and has made
90 diligent inquiry into the facts set forth in their
statement and knows or verily believes that she
or they really and by misfortune and without
fraud or evil practice hath or have sustained by
such fire loss and damage to the amount there
in mentioned and also if required shall pro-
duce their books of account and other proper
vouchers and shall also if required submit to
an examination under oath by the agent or
attorney of the Company and shall answer
all questions touching his, her or their knowledge of
any thing relating to such loss or damage or to
their claim thereupon and subscribe such ex-
amination the same being reduced to writing
and until such proofs declarations and cer-
tificates are produced and examination if re-
quired the loss shall not be deemed payable
Also if there appear any fraud or false swear-
ing the insured shall forfeit all claim under
this policy Damage to buildings not totally
destroyed shall be appraised by disinterested
men mutually agreed upon by the assured
and the Company or its agents and where
merchandise or other personal property is
partially damaged the insured shall

92 forth with cause it to be put in as good order as the nature of the case will admit assorting and arranging the various articles according to the kind and shall cause a list or inventory of the whole to be made naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article by disinterested appraisers mutually agreed upon whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant - one half of the appraisers fees to be paid by the insures - A copy of the policy to be given in the affidavit of the claimant in all cases -

- 12 - Payment of losses shall be made in sixty days after sufficient proof has been received by the Secretary in writing and in case difference shall arise touching any loss or damage it may be submitted to the judgement of arbitrators in differently chosen whose award in writing shall be binding on the parties In case of any loss or damage to the property insured it shall be optional with the Company to replace the articles lost or damaged

94 with others of the same kind and equal goodness and to rebuild or repair the building or buildings and if no notice is received by the Company of a loss within Sixty days after it occurred it shall be optional with the Company to reject or allow the claim or any part thereof

13 Insurance once made may be continued for such further term as may be agreed on the premium thereon being paid and a renewal receipt being given for the same signed by the President and Secretary and it shall be considered as continued under the original warranty in so far as it may not be varied by a new warranty in writing which in all cases it shall be incumbent on the party insured to make when the risk has been changed either within ~~Itself~~ itself or by the surrounding or adjacent buildings.

14 When a policy is made and issued upon a survey and description of certain property such survey and description shall be taken and deemed to be a part and portion of such policy and warranty on the part of the insured

96 —15.— Where property insured by this Company is damaged by removal from a building in which it is exposed to fire said damage shall be borne by the insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured of which proof in due form shall be made by the claimant—

—16— This Company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good substantial stone or brick chimney or in consequence of neglect or of deviation from the laws or regulations of police made to prevent accidents by fire in places where laws or regulations on the subject exist—

—17— It is furthermore hereby expressly provided that no suit or action against said Company for the recovery of any claim upon or under or by virtue of this policy shall be sustainable in any Court of law or chancery unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur and in case any suit or action shall be commenced against said Company after

98 the expiration of twelve months next after such loss or damage shall have occured the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced -

The plaintiff then called George I. Dement who being duly sworn testified as follows I resided in Lexington Illinois at the time of the fire and was the local agent of the defendants the property insured was situated in the said town of Lexington - The first fire took place on the night of the second of April 1859. and the second fire on Sunday night of the 3d of April 1859 and was the fire complained of. I had notice of the fire the next morning. I told Whitehill the plaintiff that I would not take charge of the property as agent for the defts but would do so as a friend until he Whitehill could go to Peoria & see about it and that he had better go to Peoria about it. Whitehill went away from Lexington and in a few days came back with Robinson the agent of the defendants I was in the store of plaintiff and Robinson who was an agent of the Company & the plaintiff were talking

100 an account of the Stock incured to ascertain the damages & getting up proof of losses done by the fire, Reynolds and Hunt were acting as appraisers mutually chosen as I understood to assess the damages - They had a great deal of talk & dispute about the patent medicines & other matters. I could not give their conversation. Thinks Robinson took proofs away with him. The drugs surgical instruments & books were all damaged by fire or smoke - The plaintiff then called ~~and~~ William Reynolds who being first duly sworn testified as follows. I acted as one of the appraisers chosen by plff of the loss sustained by the fire. Robinson the traveling agent for the defendant selected Henry Hunt as appraiser for deft, was present. Robinson & plaintiff disputed about what was covered by the policy Robinson contended that the patent medicines were on commission & were not covered by the policy. We did not appraise that portion of the patent medicines which plaintiff said were on commission. The balance we did ~~not~~ appraise. We did not know value of surgical instruments & ~~books~~ took Drs McCafferty, Dr — Statement of their value plff & defts to agt agreed to ~~was~~ taking statement of value of

102 books & instruments. We made out an appraisement of the damages and ~~certificate~~ certified & made oath to the same before Jacob Spawr a Notary Public the appraisement bell now produced & signed by Hunt & myself was the one then made out & signed by us The whole amt of plaintiff damages was $1113.24 - Robinson was satisfied with our appraisement. Henry Hunt being called & sworn by plaintiff testified in substance to the same fact that Reynolds died & also that he acted as one of the appraisers at request of defts agent Robinson damage $1113.24 every thing was more or less injured. The plaintiff then called Jacob Spawr who being sworn testified as follows. I am a Notary Public and was such at the time of the fire & resided in the Town of Lexington at that time & at the time of the fire & was residing nearer the place where the fire occured than any other Notary Public I knew where Esquire Mahan resided at the time & by the usually travelled walk my residence was nearer than his to the place of the fire. His office was across the street nearly opposite to the fire & nearer to it than my office. I made out the certificate of the loss & took the plaintiffs affidavit and the

paper now shown to me is the same then signed by me. I am not related to any of the parties to this suit & have no interest in the property insured & plaintiff was in no way indebted to me= I think that Robinson the agent of the Company was present when the affidavit & certificate was made out the plaintiff did the writing. Robinson made no objections to the way the paper was made out. The plaintiff then called Charles Noland who being sworn testified as follows. I am the Secretary of the defendants. The office of the defendant is located in Peoria. The papers here shown the affidavit of Whitehill & certificate of Spaur, & the appraisement of the loss were handed to me in my office at Peoria by the plaintiff some time in the spring of 1859. The defendant then asked the witness what he witness said to the plaintiff when he left the papers with him, witness, and at the same time stated to the Court that they proposed to prove by the witness that he then objected to the sufficiency of the proofs of loss but plaintiff objected to the witness answering the question on the ground that it was not cross examination & the Court sustained the objection to which opinion

105 of the Court the defendants then & there excepted - The plaintiff then offered in evidence the affidavit of plaintiff & the certificate of Jacob Spoor attached thereto to which evidence the defendant objected ~~to~~ but the Court overruled the objections & the same was ~~read~~ read as follows

State of Illinois } Lexington April 11. 1859
County of McLean }

By this policy of Insurance the Peoria Marine and Fire Insurance Company in consideration of Five ²⁰/₁₀₀ dollars to them paid by the insured herein after named the receipt whereof is hereby acknowledged do insure James L. Whitehill against loss or damage by fire to the amount of Twenty five hundred dollars. $2500.00 on his stock of Drugs and merchandize $200.00 on his surgical instruments $200.00 on Medical Library - all contained in a wood building occupied as a drug store one story high situated in the Town of Lexington Illinois, Permission to keep for sale Alcohol Burning fluid, Camphene and Turpentine but not to use the same by open lights, also permission to use camphene and fluid lamps but to be thoroughly cleaned every day and

10 ℔

to Trim and fill the same in all cases by day-
light Shaw was no other insurance on the prop-
erty owned by the policy of which the above is a
copy& I believed the value of it at the time of the
fire to be about $3000.00 and the loss from
$1200. to 1500.00 The building was insured in
the Illinois Mutal Insurance Company and
was owned and occupied by me alone as a
drug store. The fire occured on the night of the
2d & third Inst and I believe was the work of an
incendiary

James L Whitehill

James L Whitehill being duly sworn by me
deposes and says that the facts set forth in the
above statement are true to the best of his knowl-
edge and belief

Subscribed and Sworn to
before me this 11th day of
April A.D. 1859

Jacob Spaw
Notary Public

I do hereby certify that I am acquainted with
the character and circumstances of James
L Whitehill and that having made diligent
inquiry into the facts set forth in his statement
know or verily believe that he really by mis-
fortune and without fraud or evil practice on

107 his boat - hath sustained by such fire loss and damage as therein set forth

L.S.

Jacob Spaw
Notary Public

To which opinion of the Court in overruling said objections & allowing said paper to be read in evidence the defendants then & there excepted The plaintiff then offered to read in evidence the appraisement bill made by Reynolds & Hunt with affidavit thereon to the reading of which the defendant objected but the Court overruled the objection and allowed the same to be read which is in words and figures as follows to wit

Lexington April 7th 1859

We the undersigned appraisers hereby agree that we will appraise the loss and damage on Dr Whitehills stock according - the best of our ~~knowledge~~ judgement - The same to be sworn to before a Justice of the peace. The loss or damage to be estimated according to the actual first cost of the Stock and its present state =

108

Original Val, damages

1	Gal Tincture Jos					50 F
1	1/2 " " "					28 F
14	1/4 " " "				2	8 3 F
22	1/8 " " "				3	25 F
15	1/2 pt Salt mouths				2	19 F.
6	1 pt " "				1	38 F.
3	1/2 Gal " "				2	9 5 F.
2	1 " " "				1	50 F.
4	1 " Ring				3	3 3 F.
1	1 " Blue Stopl Lab Jars				2	00 F.
14	Box 10 x 14 Glass	0				
18	" 10 x 14 "		57	42	28	71/2
100	put D Strength 24 x 36				17	50 F.
1	Gro gt Glasses	0				
1/2	" 1/2 oz Prescription vials					88 1/2
1	lot varnish		$ 50	00	$ 35	00
6	Gall Brandy $7-		$ 42	00	2	00
6	" " $4.50		$ 27	00	10	00
26	" "		56	00	10	00
4	Galls Gin		14	00	00	00
42 1/2	Gall Alcohol	65	27	63	27	63
1	Bbl Whiskey		30	00	8	00
46 1/2	Gal Camphene		39	54	39	54

109

				Value		damage	
2	50 Gal Tin cans			13	00	13	00
1	Empty Bbl			1	00	1	00
6	lbs Boy chrome Green			2	70	000	
6	" " Yellow			1	32	000	
3	lb Am Vermilion		23		69		00
20	" Whiting				80		00
	Cammon			1	50	00	
20	Logwood				80		80
20	Ohre				80		80
5	lbs Arnica flower			1	75	1	75
17	Ep salts		7	1	19		35
20	Madder		14	2	80	2	80
6	Paris Green			1	63	000	
						216	27
21	lbs Carb Soda			1	47		35
4	Gum Shilach			1	00	000	
5	Burnt Umber			1	25		63
6	Glover			1	00		00
8	Arnotto				92		37
12	lbs Fenugreek		15	1	80		90
8	" Mustard seed			1	16	000	
	Glover				16	000	
1	Certificate				45		00
3	Tartaric acid			1	50	1	50
2	Fish bones				40		00

110

				val.	dam.
2	Senecua			25	00
2	Sebun		20	40	00
1	Senebo			50	50
2	Snake root			1 00	000
1	Squaine			60	00
1	Rosemary			35	00
5	Cherry Bark	25		1 25	000
2	Camomile Flowers			80	00
2	Hebub			90	00
2	Sulphate Zinc			60	60
2	Aconite		15	60	30
1¾	Iceland Moss			30	30
2	Mdean Juniper			1 00	000
2	Lavender Leaves			40	00
3	Red chalk			20	00
2	Cocknd cum Root			56	00
2	Gum Camphor			80	25
2	Iris Florenced	1.20		2 40	2 40
2	Ginger root			16	04
1	Granulated Nitre			38	38
2	Bloody Roots			60	00
1	Ally Campaine			20	20
2	Pearl Bark		8	16	16
2	Glue	45		90	00

11

			Val	dam
1	Gambage		60	00
	Gentian Root		10	10
1	Alegatter		35	18
1	Scampy	45	45	45
8	Sugar lead		1 20	00
10	Mustard Seed		1 30	00
1	Spec.ac Root		1 50	75
2	Ginger		20	00
3	Nux Vomica		24	00
1	Sly Sempanion		20	20
2	Magnia Root		50	25
1	Hyoclena		60	60
3	Liquorice		1 20	00
	Total damage	$13.41		11 61/80
				13.41
4½	lb Burgundy Pitch		54	
2	Shamois or Sheep Skins		75	
8½	lbs Gum Turpentine		28	
1¼	" " Catechu		25	
3	" Squills		30	
8	" Gum Myrrh		1 20	
3	" Cooper Sang lass		2 62	
2½	" Gentian Root		20	
8½	" Colombo		35	
6	" Red Cenchona		1.50	

112

			Val.	Dam
	2½	Gum Ammoniac	62	
	—	lot pill boxes	50	
25 per cent damage	½	℔ Gum Galbanum	60	
	1	" Ref. Borax	25	
	1½	" Calcinus	45	
	3	" Beeswax	75	
	½	" White wax	30	
	2	" Cascarilla Bark	25	
	2	" Arisca Senn	25	
	10	" Wood Charcoal	200	
	3	" Animal Charcoal	30	506
	250	" Large Envelopes	50	50
	1	" Ream Tea Paper	125	
	6	qr wrap paper medium	35	
	1	Iron Pestle & mortar	150	
	2	Doz Bougies &c	170	
	½	" Blacking 35	123	
Perfect	3	doz Screw plasters	750	
	1½	" Nipple Glasses	375	
	8	Cupping Glasses	150	
	5	Bird Fountains	125	
	7	Nursing bottles	175	
Perfect	1	Gross Mem Vials	250	
	1	" " "	250	
	3	doz assorted Glass Syringes	600	

113

				Val.	Dam
	1½	Doz Small metalic Syringes		1 12	
	9½	" large " "		9 00	
	1¾	lbs Cinamon		70	
	1	box Segars		1 75	
	3	" "	2¼	6 75	
	2	" "	4.	8 00	
	2	" "	3¼	6 50	11 85
10 pcnt	5½	" "	2½ Cind	33 00	3 30
	10	bot. Hair Oil		3 75	3 75
	1	doz pound Soap		2 00	2 00
	½	" Bees oil		60	6
	1½	" Sash tools		2 25	56
	1	" Paint brushes		2 00	50
	2/12	" " "		1 00	50
					28 08
	1¾	= Gum Cind		45	~~##~~
	2	= Emery		16	~~16~~
	2½	= Granulated Nitre		1 00	
	¼	Cubeb berrie		12	
	¼	Sug lead		5	
	1	nutmegs		1 00	
	3¼	Pulv. Jalaps		1 00	
	1 6/16	Cochineal		1 95	
	2/16	Nitric Acid		12	
	¾	Gum Catichue		16	
	¾	Bromade potash		27	

80 d on the whole bo.

114

		Val.		damages	
3/4	Sulp potash	~~08~~	08		
1/4	Carb Zinc	~~00~~	50		
1	Powd Goly Kutt	1	00		
1	Powd Gumbage		60		
1/4	Palv Ergot		18		
3 1/2	Red Precipitate	3	50		
1 3/4	Tartar Emetic	1	05		
1/16	Koosso Powders		20		
2 1/2	Emery		25		
2	Calomel	3	00		
5/16	Palv Gum Myrr		50		
		3	66	3	66
2/16	Vanilla Bean				
1	Powd Iris Root		20		
2	Palv Nut Galls		90		
5	Oz Powd Opium	~~3~~	30		
1	Sulph Antimony		65		
1/16	Valvin Root Pate		05		
3	Pearl Barley		25		
1/2	Oxalic acid		18	2	42
	Pills Pills	2	00	2	00
1/2	Oz Benjoic acid		50		50
3 1/2	Castor	3	50	3	50
32	Fluid Ext Buchu	3	20	3	20
7/12	Rattanion		95		99
2	doz Condition powders	3	50	2	65

10 pr & damages except Damaged Box it told

			Val.		Dam.	
115						
35	Box	Graffenbaughs pills	5	84	00	
5	"	Chapmans "		84		00
3	"	Mars		50		00
11	"	Pills	1	84	000	
1	Chilton			66		00
1	"	Pills		33		
				$	18	30
1/4	lbs	cas Magnesia		18		
3 1/2		Pulv Ipecacuanha	21	00		
1 1/4		Ext Liquirice		60		
2 1/4		Lac Sulphur		40		
3		Gum Camphor	1	20		
1/2		Ep Salts		5		
1/2		Carb Potash		12		
4		Sup Carb Soda		32		
2		Cream Tartar		80		
2		Pulv Gum arabic	1	20		
1/4		Carb Magnesia		12		
3		Best Gum Arabic	2	00		
3/4		Anise Seed		76		
1/4		Powd Cinnamon		12		
2 3/4		Blk Mustard seeds		40		
1 1/2		White " "		20		
1 1/4		Shff Cayenne		20		
1/2		Carb Ammonias		31		

10 pd 4 ounces damaged

		Val	gaw
116			
2	Worm Seed	80	
5½	Arsenic	65	
2	Camilla	95	
¾	Lavender flowers	30	
¼	Allspice	10	
1¾	Lac Sulphur	25	
3½	Sage	35	
¾	Caraway	12	
½	Rosemary Root	15	
1	Ground Penny yeast	14	
1½	Jamaica Ginger	63	
2	Corn Ginger	25	
2	Powd Gentian	30	
½	Blk pepper	7	
½	Cayenne	70	
2	Pure Alum	60	
2	Oxalic Acid	70	
2	Sulph Zinc	20	
½	Pulv Liquorice	12	
1	Nux Vomica Pulv	45	
1	Sulph Iron	20	
1	Powd Ipecac	2 25	
1	Pulv Liquorice Glanc	12 00	
½	Tartaric acid	25	
1¼	Prepared Chalk	31	

				Val.		dam.	
11							
10 p d damage	1/4	Rochell Salts	add 10 p d		40	10	30
	49	Box Pills		53	41		
	9	" "			8 16		
	41	" "			3 00		
	5/12	" "			6 16		
	8	" "			3 30		
				2	66	2	30
	6	lbs Spices ap		1	50		75
	2	" Chrome Yellow			56		56
	6	" Pot ash		1	00	1	00
	16	pt Gin			5 25	1	00
Drawers	1/2	lb " Rowland Root (Cerm)			61		
	3/4	" Manna			80		
	2 1/4	" Mur dte Ammonia			36		
	18 1/4	" Alumn			93		
	8	" Blue Vitrol		1	20		
	7 3/4	" Am Blk lead			99		
	2	" Aloes Gum		1	00		
	5	" Elm Bark Ground			44		
	11	" Copperas			88		
	2 3/4	" Gum Ammonia			68		
	15 1/2	" Rock Brimston			99		
	18 1/2	" Salt Petre		1	85		
	4	" Irish Moss			40		
	1 1/2	" Iceland Moss			15		
	2 1/2	" Orange Peel			55		

118

		Val.	Dam.
9½	lbs Saleratus	47	35 cts
4½	" Rasp Liva c	20	
5	" Ground Quasia	40	
1¾	" Honduras Sasaparilla	90	
7	" Gum glue	1 26	
3½	" Hops	87	
1½	" Flex Senna	38	
5½	" Juniper berries	33	
1	" Lobelia Seed	40	
2	" Dandelion	80	
1½	" Log Wood	38	
½	" Nuts-horn	15	
½	" Cicuta Leaves	20	
½	" Aconite Leaves	20	
¾	" Bone sett	22	
1½	" Hardhouse	52	
9¾	" G. G. Indigo	9 30	
12	" Ground Logwood	36	
13½	" Cheek	40	
2¾	" Cavendar seed	41	
1¼	" Bleatany	60	
½	" Seneca Snakeroot	37	
½	" Virginia " "	15	
¾	" Pink Root	32	
		29 93	750
			$13.49

119		Value	Damage
	Damage to Bicycle Scott		600
	Damage to Library		76 00
5	Yams Pat labels	75 00	1 75
1	Book Labels	15 00	500
1	lb fine Sponge		200
	Lamp acets	1 00	100
	Sot mace	40	40
1	lb Bowd Xanthoxder	300	100
1	" Red Re eipetals	150	75
2	" Yellows	40	10
1	" White Re eipetals	150	75
	" Sot drugs	250	250
140	Oz Tinctures	9 80	9 80
3/4	Xanthoxides	2 25	56
1/2	Ointment	1 00	1 00
1	lb Glycerine	1 50	1 50
75	Oz Oils	30 00	30 00
11	Yeasts soap	1 10	1 10
4	Wolfs snakes	2 66	65
4	doz paper boxes	1 00	25
4	" powder box	1 00	33
14	Oz Oil 10	1 40	1 40
3	doz blasters	7 20	1 80
37	qt Tinctures	6 16	
14	3/pt "	3 23	

			Val.	dam.
120				
23	½ Gal	Tinctures	6 75	
18	1 "	"	9 00	
13	13 Acid Bottles	3 qts.	6 50	
27	1 pt	Tinctures	3 94	
22	22 Oz	Salt Morattes	5 50	
23	3 pt	" "	8 63	
19	½ Gall	" "	10 26	
19	qt	" "	5 14	
6	1 Gal	Squat Jars	3 00	
1	Ring Jar		75	
			68 86	
		40 pr ¢ damage		27 54
3	doz	Liniment	6 00	6 00
9	bot	ague medicine	6 00	6 00
1	doz	Yaniers liniment	2 00	2 00
1	doz	Ylords Liniment	2 00	2 00
1	"	Swains Syrup & Cherry	8 00	8 00
½	"	Ear liniment	1 00	1 00
3	"	" "	6 00	6 00
1	"	Swains E. Syrup	8 00	8 00
½	"	Swains ——	4 00	4 00
5	"	Rowlands B Root	10 00	5 00
29½	"	University Remedy	22 00	11 00
13	"	Liniment	26 00	26 00
3	"	Braggs Ionic Pills	18 00	9 00

40 pr ¢ damage

Protest

		Value.	damages
2 doz	Bragg Anti bilious	4 00	2 00
1 "	McLeans —	2 00	1 00
1/2 "	Holloway	1 00	1 00
1/2 "	" Ointment	1 00	50
1/2 "	Mustang Liniment	2 25	2 25
1/2 "	Ferguson Liniment	2 25	2 25
1 "	Floyds "	2 00	1 50
1 "	" "	2 00	1 50
1 "	Johnson Blueny	1 20	60
6 "	Arab Liniment	12 00	6 00
1/2 "	Youts Liniment	2 25	1 12
2 "	Bragg Pills	2 00	1 00
1 9/12 "	Wells Syrup	14 00	8 66
1 "	Capshon	2 00	2 00
1 "	"	2 00	2 00
9	Cakes Starch Balast	90	90
2 "	Capshon	2 50	1 25
1 box	Cauthrides Ointt	2 25	2 25
4 doz	Ess Laudanum	3 36	3 36
1 Bxp	Grease dressing	1 00	1 00
2 lb	Sealing wax	1 00	50
2/2	Godfrey Cordial	1 90	1 90
8	Bot Elix Opium	50	50
4 doz	Vermifuge	8 00	8 00
1	Package Kindle Meds	3 00	3 00

122		Val.	Dam.
11	Box Brown Jamaica Ginger	4 75	4 75
1/3	doz Barry Gy coperas	66	66
15	" Whitehills med	45 00	22 50
9	Lamp Globes	2 25	1 12
11	bot Coopers Bitters	5 50	5 50
2	Liniment & thermometer	1 22	1 22
1/2	Lemstock Liniment	2 00	2 00
6/3	doz Hobflands Bitters	37 25	37 25
8	Bot Jewel Gargling oil	3 00	2 25
2	Hair Nemberg	33	33
1/2	doz Turkish Wine	3 25	1 62
7	Bot Hair Gloss	2 23	2 23
9	" Lung medicine	6 00	6 00
9	Heaths Jamaica	6 00	3 00
3	" Liniment	2 25	2 25
11	" Pills	1 64	0 00
2	" Ointment	1 00	57
5 1/2	Swains Compound	30 00	15 00
4	" Catholicon	2 66	1 33
1/2	doz Soaped Eels	12 50	6 25
1	" Swains Vermifuge	2 00	1 00
9	box London Pain Exts	1 50	1 22
6	doz Lavos Vermifuge	12 00	1 20
6	" " Pills	12 00	1 20
2	" Lowden "	4 00	2 00

			Value		Dam.	
123						
3	lbs dry ginger	31		93		35
2/3	doz London Balm Baks		4	66	2	33
9	box Lemstocks kills		1	50		30
2	bot Smith tonic		1	33		67
5	" Bairs Teething Syrup		1	65		85
1	doz Lowdens pill		2	00	1	00
3	" Lozenges "		4	00	2	00
7	bot Lowdens Derm		1	16		58
1 3/4	Lemditions		3	50	1	75
20	Lowdens Vermifuge		3	66	1	83
2	doz Worm Tea		4	00	2	00
9	Bot Liniment		1	50		75
11	Bot Lowdens Hair tonic		3	66	1	83
2	Lemstock pills		4	00	2	00
2 1/2	Ague powders		5	00	2	50
1 1/2	Gargling Oil		6	00	1	80
14	Bot Lopons Sarsaparilla		4	66	4	66
1	doz Lemstock Lemditions		2	00	1	50
1/2	Chapmans toothache		1	00		25
3	bot London Lemon		1	50		
3	" Accoustic Oil		4	50	4	50
6	lb Carb Ammonia		1	50	1	50
32	Glasses		48	00	16	00
1	Lot nipple glasses		15	00	5	75

1874			value.	dam
1/2	doz pomaturm	28	1 68	
1/2	" beans bil	20	1 20	
6	Balls Soap	15	90	
10	Hair oil	17	1 70	55
1	box cigars		2 50	
5	Indigo		5 00	
1/2	lb Ext Mace		1 93	1 98
3/4	" leaf = Roes		30	30
1	" Annetta		40	40
3	" Balsom Saline		2 25	2 25
4 1/2	" Ointment Cantharedeans		6 12	3 06
5	" Mercurial Ointment		3 25	3 25
5/12	" Ext of Jallop		1 05	1 05
150	Envelopes		30	30
3/4	Ext Colocin		1 50	1 50
1	" Hy blue Mass		56	56
1/4	" " " "		14	14
1 Oz	" Ext Arnica		40	40
8 Oz	" Ext Aconite		60	60
1/2	" Acetic Potash		43	43
1 Oz	Nitrate of Quinine		70	70
1 Oz	Oil Nutmegs		60	60
5 Oz	Creosote		90	90
1 Oz	Oil Spree		85	85
	Wine ergot & Ext Cambus Nibus		1 50	1 50

125

		Value.		Amt.	
3 03	Wine of Ether	1	80	1	80
1 Oz	Oil Spice		85		85
1 lb	Eug Calomel	1	50		
1 "	bors. Sublimate		80		
2 Oz	Jamaica		60		
2 lb	Syd Can bret	1	00		
1 Oz	Gamin	2	25		
1 lb	bi bart potash		50		
5 "	Sale Tartar		80		
1 "	Puss Chark		20		
5	Boat Sulph Morphine	2	25	1	00
2	Nitrate potash	1	90	1	90
1 Oz	Pro to Iodine Mar		75		75
2 "	" " a "	1	50	1	50
1 Oz	Iodine Sulphur		45		45
1 "	Iron		45		45
1 "	Prussic acid		22		22
8 03	Nitrat potas	7	60	7	60
1/2	Pulv Squills		20		
1/2	Iodide potash		25		
1/2 lb	Sub Nit of Bismuth		50		
5 Oz	Vanilla bean	8	12		
2 "	Pulv Opium	1	33		
2 "	Rubarb		80		
1 lb	Murriate		88		
1/4 lb	Calomel		40		
1/2 Oz	Gnac Acid		15	3	16

Partial loss by fire

Partial loss 25% per damage

126			Value.	Dam.
1	Hydrometer		150	150
1½	Oz Lemt Spirit		30	30
46	Oz Tinctures	7	322	322
24	" Essential Oils	40	960	960
½	lbs Chloroform		88	83
1½	Collodium		150	150
2½	" Simple Ointment		50	12
1½	" Compound "		150	38
4	Oz Saffron		137	
2	Oz Lemt Spirit		900	900
16	No Candles		224	112
2	Oz Mur Sulphur	45	90	90
1	dram Comp Morphine		75	Paid
1	Oz Lactate Iron		45	25
3	Oz Powd Iron		60	60
1	Oz Pro Acet Morph		60	60
1	Oz Iodine		60	
½	Oz Inst Sem Castile		62	60
1	Oz Iodide Iron		60	60
1	Oz Iodide Potash		40	40
½	Oz Pil Gummi Opii		30	30
½	Oz Iodide Iron		60	60
1	Oz Ammon Chlor		60	00
1	Oz Powd Nitrate		300	75
1	dram Ung Lemt Spirit		30	30

			Value	Damages
127				
1	Oz Iron Quinine		60	60
2	Oz Oil Alma		200	120
3/4	Oz Yanate Quinine		265	265
1	Oz Lumen Leotic		125	
8	pack Fluid Extract		3200	
4	" " "		1200	
6	" " "		2400	2400
8½	Oz Leucenia	90	765	70
1	Oz Sulp quinine		250	
1	Oz Ess Something		50	50
1	lot Leeks		200	50
1	" "		200	00
	Goods in Show case		12500	500
2	French Chalk		70	00
1	Leocantus	18	18	00
1	Harpoon		40	40
1	Lumen Aloes		60	60
1	Redbark		120	000
2	Calcicum Seed		70	00
1	Powd Allower		60	40
2	Powd Wormwood		20	000
1	Red Rose Leaves		185	95
1	Lumen Dragon		55	00
1	Golden Seal		60	30
1	Lobelia		45	22

				Value		dam.
128	3	Verdigris		1	95	000
	1	Nocanna			60	60
	1	Lamb Iron			40	40
	3½	Lead Malchus	25	2	62	000
	¼	Lamb Magnecia			11	00
	2	Prussian blue		1	40	25
	3	Red Saunders			30	00
	5	Gua Leuana			50	26
	1½	Gal Lemar Varnish		4	50	00
	6	Ext Logwood		1	00	50
	2½	Six Ounce Vials		3	75	000
	20	Spanish Rum			40	40
	5	Prussian Blue		300		000
	5	Indigo		600		000
	5	Indian Red			90	00
	5	Paris Green	36	1	80	90
	5	Drop Black		1	00	25
	5	Patty			35	35
	7	Rosepink		1	00	50
	2	Lead Linseed Oil	66	1	32	1 82
	2	Phosphorous		200		30
	8	lb Nitric Acid pure		200		000
	8	" " "		300		000
	8	Muriatic "		300		000
	20	Oil Vitriol Com		400		400

				Value		Dam.
129	8	Bal Copaiva		3	00	80
	5	Barbadoes Tar		1	00	25
	21	Balsam		5	25	1 00
	1042	Oz Tinctures		72	54	72 54
	132	" Essential Oils	40	52	80	52 80
				~~1503~~	3	140 31
						1 40
		Total damage on this page —— add to be			$	141 51
					$	2 70
					$	144.21

Lexington April 11th 1859

Personally came before me a Notary Public for McLean County, in the Town of Lexington William Reynolds and D H Hunt who being by me sworn, depose and say that they have carefully investigated the damage sustained by the late fire in J. C. Whitehills Drug store in said Town of Lexington and find it to be Eleven Hundred and Fourteen dollars and 24 cents

Wm Reynolds
D H Hunt

Subscribed and Sworn to before me this 11th day of April 1859

Jacob Spaur
Notary Public

L. D.

130 To the opinion of the Court in overruling such objection the defendant then and there excepted. The plaintiff then read in evidence the following letters from Charles Holland the Secretary of defendants to plaintiff

Oct 7. 59 page 210

Dr Jas L Whitehill
Lexington Ills.

D Sir In reply to yours of the 6th I say our board did not take action on your case at their last meeting. They had a prolonged Session being until after ten at night and much business was left over until next regular meeting-

Yrs truly
C Holland Sec'y

page 472
Nov 10. 59

James L Whitehill Esq
Lexington, Dear Sir

Yours of 7th at hand Secretary is absent will hand him your letter on his return

Respy Chamberlain
Book Keeper

page 5-14

131 Nov 15. 59

Jas L. Whitehill Esq
Lexington Ill-

D.S. In reply to yours of the 13th I can only say I have been absent for more than a month past returned yesterday & cannot say what has been done by the board during my absence My clerks say however that we are garnisheed by St Louis parties pro and on your claim and will have to answer that garnishee

Yr Truly
C. Holland Secy

The plaintiff here rested his case Whereupon the defendant by their Counsel move the Court to reject the evidence of proofs of loss offered by the plaintiff because the same were not in conformity with the conditions annexed to the policy & did not correspond with the allegations of the Plaintiffs about making proof of loss to defendants which motion the Court overruled and allowed the evidence to be considered by the Jury to which ruling of the Court the defendant

132 then and there excepted. The defendant then introduced Jacob Spaun who testified that on the 21st day of June 1859. I notified the defendant by letter written by Clement defendants local agent at Lexington that I did not want the certificate which I gave the plaintiff of his loss to be used as evidence - The defendants then introduced Charles Mirrell who being duly sworn testified as follows. I live in the City of Peoria, am a Clerk in the office of the defendant and was during the year 1859 In June 1859 the plaintiff came to the office in Peoria and I heard a conversation between Holland the Secretary of defendant and the plaintiff - The plaintiff asked Holland if he should make out any further proofs of loss. Holland told him he could if he was worried to that he should not pay the loss Holland told him that he had information from Lexington about the loss and would not pay it that he (Holland) thought that he (Plaintiff) burnt the house himself

Whitehill the plaintiff said he would like to have a hearing before the Board of Directors. Holland said that he thought it would not amount to any thing.

133 Mr Holland adjusted losses Mr Holland had authority from the board to determine about the payment of losses. The policy sued on was issued at Peoria on the application I have shown to me marked in my hand writing No 10407 and in the application is the hand writing of Plaintiff. The policy was filled up by me. The defendant has read in evidence the application referred to by witness Morrell in words and figures as follows to wit =

No 10407 -

Application of James L Whitehill of Lexington in the County of M Lean in the State of Illinois for insurance against fire by the Peoria Marine and Fire Insurance Company of Peoria for the sum of Twenty five hundred dollars for the term of 2 months from the 29 day of March 1859 -

	Estimated Value	Amt. Insured	Rate per $100.	Premium
On stock drugs & other wares in trade. Inventory of Jany - 1859 since which our stock has increased	3917.51	2100		1¼
On Surgical Instruments	243.00	200		
On Medical Library	275.00	200		
	$4435.51	2500		5.20

134 all situated in the Town of Lexington in the 83
County of McLean State of Illinois on —

1. What amount is there insured on the property and in what offices? The building is insured in Illinois Mutual; there is no insurance on the Stock in trade
2. Is there any incumbrance on the property if so to what amount? There is none
3 Is it insured by holder of incumbrance? —
4 Is the building stone brick or wood? Building of Frame - Weatherboarded lined & plastered.
5 What is its condition size &c? New - Twenty by thirty six feet =
6 How many stories high? One story
7 For what purpose used? Drug Store
8 How many tenants? Occupied only by my self
9 Are the division walls brick or stone? ———
10 How thick? ———
11 Do they rise above the roof? ———
12 Are there openings through them into other buildings if so how many? ———
13 What is the roof covered with? Shingles
14 Is there a scuttle and stairs to it? — None —
15 Do Stoves all stand on suitable brick or stone hearths or on metallic substances? On Zinc
16 Are the pipes a safe distance from the wood?

They are —

136 17 Is the wood well guarded by cinchs or metallic substance? By tin flues

18 Are the chimneys built from the ground? From the joice. There is only one

19 Are they all sound? New.

20 Are there any wooden fire boards which may ignite from fallen cinders in the fire place? None -

21 What is used for fuel? Wood

22 How are the ashes disposed of? Thrown in the street

23 Is camphene or burning fluid used in the building? If they are -

24 Exposures. - Describe all other buildings and how occupied and all other exposure to fire their distance from risk and from each other within 150 feet

North - None

East - A Butcher Shamble - 16½ feet across alley -

South - A butcher shamble about 20 feet - This is to be removed - There is no fire used in it

West * The shamble is on the West side - Rear of it faces on the street on the South across which there is a frame one story building

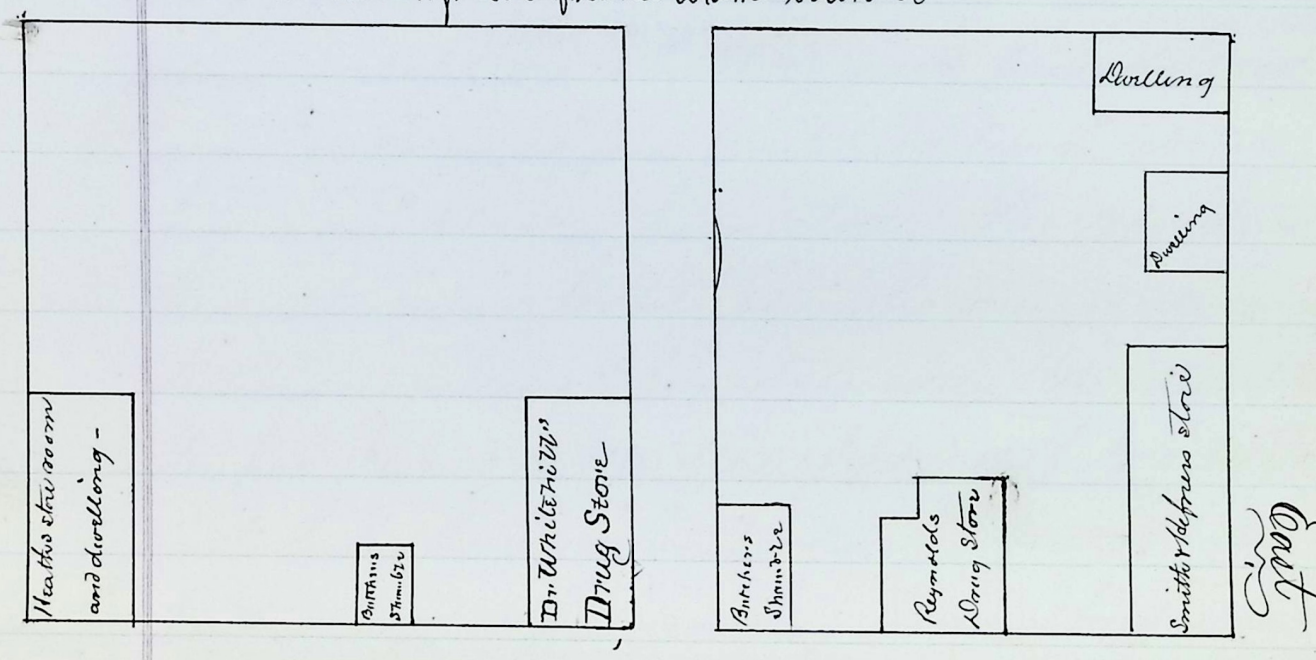
* diagram on other side will explain the relative positions of buildings on both sides of the street for one square East & West

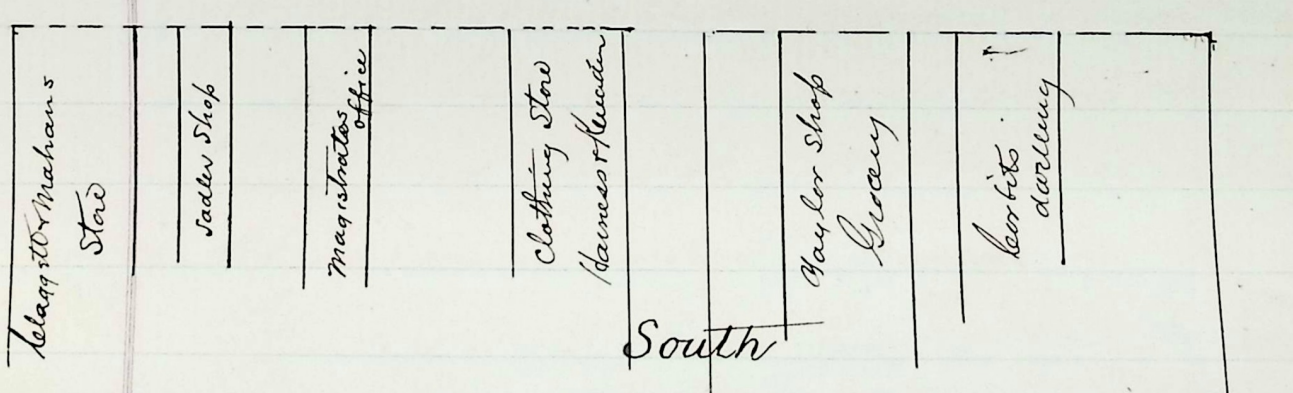
25 What are the means for extinguishing fires in the
137 neighborhood of the risks? There are two wells
convenient. No other means of extinguishing fires
than by ordinary bucket &c. I hereby declare that
the above questions are correctly answered and that
I have not withheld any circumstance or informa-
tion or rumor in any manner concerning the
above enumerated property -

James L Whitehill
Applicant

North

All the buildings are frames weather boarded





138 To the reading of which Plf. by his counsel objected but was overruled by the Court to which ruling the Plf then excepted. Defendants then introduced G. H. Franklin who testified that + [he slept near Whitehills store at his office that on sunday night of the fire he was awakened by the [illegible] of fire & report of a gun. Got up went to fire saw it was Whitehills store was ~~about~~ almost fire one at the fire Robert was next about & it may be ten minutes of I got to the fire Whitehill came White Sullo witness talked ~~about~~ about fire Whitehill said he had heard gun & alarm of fire Whitehill lived about five or six blocks from store The defendant then introduced Ed. Preble who being duly sworn testified as follows - On Saturday the day before the fire I went to the Store of Plaintiff to settle with him he said his books or some of his books were at his dwelling house, I had seen the books in the Store before that time - Plaintiff said that he could not then settle with me for the want of his books or some of them which were at his house and he was drawing off accounts and did not settle My account had been running about two years =

The defendants then introduced George

G. Dement who testified as follows. I was agent for the defendants in the Town of Lexington the plaintiff applied to me to insure his drug store but I refused to do so. I told plaintiff that I intended to resign my agency on account of my other business & that he would have to go to Peoria to get his policy. The fire took pla on the first occasion on Saturday night the second of April 1859 & there was no alarm created by it & it apparently died out itself The second fire occured on Sunday night April 3d 1859 and was extinguished by the citizens. I went to see the fire & the plaintiff was present this was on monday morning. I told plaintiff that I thought the burning fluid had been taken out of the cask & spread on the building with the counter brush - The plaintiff said that the Temperance men had been as he was told threatening to burn it. he said the temperance men had threatened him to burn his store On friday before the fire the plaintiff told me that he had lost the key to the back door of his store & wanted to get another of me but did not get one as I had none that he said would fit his lock He said that at the time of the fire his corpe was sick & he had a pain in the bowels

and was up when the fire occured. =

140 The defendant then called — Reynolds who testified that he was a druggist & lived in Lexington and was one of the appraisers & knew the stock of drugs insured by Kleff. Stock of drugs was worth about $2000. that he would have given that amount for them that the patent medicines were worth about $500, do not know what the Library, Surgical Instruments were worth = would think the whole worth $3000.00 The defendants then called Hunt who testified that he was brought up a druggist & was one of the appraisers. That the stock of drugs & Patent medicines & furniture in the store were worth about Three Thousand dollars. The defendant then called John Halverler who testified that he was the agent of the Illinois Mutual Insurance Co. that on the 17th day of March 1859 plaintiff came to witness to get the building & which said stock ~~by~~ of drugs were insured in the said Ill Mutual Insurance Co got the building insured policy did not arrive from Alton until Friday before the fire the plaintiff inquired two or three times of witness if his policy had arrived before it did come

141

to hand told plaintiff on saturday before the fire that the policy had come to hand witness had a conversation with plaintiff about the fire plaintiff said that the temperance men had set the building on fire - Witness replied that the temperance men would not do such a thing, I was one of the temperance men. The Illinois Mutual Insurance Co. paid the loss. the plaintiff did not come to me about the loss - it was adjusted at alton =

The defendant here closed the evidence for the defence = The plaintiff then ~~read~~ read without objection in evidence a policy of Insurance as follows =

Number 2237 Rate 1/4 —

Amt Ins'd $2500. Premium $ 31.25 -

The Peoria Marine and Fire Insurance Company -

- Peoria Illinois -

By this policy of Insurance The Peoria Marine and fire Insurance Company in consideration of Thirty one 25/100 dollars to them paid by the assured herein after named the receipt whereof is hereby acknowledged do insure James B. Whitehill Lexington Illinois against loss or damage by fire to the amount of Twenty five hundred Dollars $ 850 On his Drug Store

142 building of wood Occupied as a Drug Store & Dwelling by applicant situated in the Town of Lexington Ills $1250. on his stock of Drugs and medicines contained therein $400 on his furniture contained therein - Permission to keep for sale alcohol Burning fluid Camphene & Turpentine but not to sell the same by open lights Also permission to use Camphene and Fluid Lamps but to be thoroughly cleaned every day And to fill & trim the same in all cases by day light - All as particularly described in the application of the assured numbered 2237 on file in the office of this Company said application shall form part of the contract to be taken in connection with this policy and a warranty on the part of the assured And the said Company do hereby promise and agree to make good unto the said assured his executors administrators or assigns all such immediate loss or damage not exceeding in amount the sum insured as shall happen by fire to the property as above specified from the Twenty ninth day of May One Thousand Eight hundred and fifty seven (at 12 O'clock at noon) unto the Twenty ninth day of May One Thousand

143 Eight hundred and fifty Eight (at 12 O'clock at noon) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen and to be paid within sixty days after notice and proof thereof made by the assured in conformity to the conditions annexed to this policy Provided always and it is hereby declared that this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion insurrection riot or civil commotion or of any military or usurped power or any loss by theft at or after a fire And provided further that in case the assured shall have already any other insurance against loss by fire on the property hereby insured and not notified to this Company and mentioned in or indorsed upon this Policy then this insurance shall be void and of no effect. And if the said assured or his assigns shall hereafter make any other insurance on the same property and shall not give notice thereof to this Company and have the same indorsed on this instrument or otherwise acknowledged

by them in writing this policy shall cease and
194 be of no further effect. And in case of any other
insurance upon the property hereby insured wheth-
er prior or subsequent to the date of this policy the
assured shall not in case of loss or damage be
entitled to demand or recover of this Company any
greater portion of the loss or damage sustained
than the amount hereby insured shall bear to
the whole amount insured on said property.

And it is agreed and declared to be the true in-
tent and meaning of the parties hereto that in case
the above mentioned premises shall at any time
after the making and during the continuance
of this insurance be appropriated applied or
used to or for the purpose of carrying or exer-
cising therein any trade business or vocation
denominated hazardous extra hazardous or
included in the memorandum of Special rates
in the conditions annexed to this policy or for
the purpose of storing or vending therein any of
the articles goods or merchandise in the con-
ditions aforesaid denominated hazardous
extra hazardous or included in the memo-
randum of Special rates unless herein
otherwise specially provided for or hereafter
agreed by this Company in writing and

added to or indorsed upon this policy then and
155 from thence forth so long as the same shall be
so appropriated applied or used these presents
shall cease and be of no force or effect. And it is more-
over declared that this insurance is not intend-
ed to apply to or cover any books of account
written securities deeds or other evidences of title
to lands nor to bonds bills notes or other evi-
dences of debt nor to money or bullion. And that
this Policy is made and accepted in reference
to the conditions hereto annexed which are to be
used and asserted to in order to explain the
rights and obligations of the parties hereto in all
cases not herein otherwise specially provided for
In Witness Whereof the Peoria Marine and Fire In-
surance Company have caused these presents to
be signed by their President and attested by their
Secretary in the City of Peoria and State of Illi-
nois this Twenty ninth day of May 1857 -

C. Holland Secretary

(L.S.) Isaac Underhill President

Conditions of Insurance referred to in the Body
of the foregoing Policy -

1. Goods not hazardous are such as are usually
kept in Dry Goods Stores including Coffee Gloves

Household Furniture and Linen, Indigo, Rice
16 ℔. Spices, Sugar, Teas and other articles not combustible –

2 The following trades and occupations goods wares and merchandise are denominated hazardous viz= Alcohol, Basket Sellers; Brush makers stock, Cabinet furniture, China, Earthen or Glass ware or plate Glass in boxes crates or casks Copper plate printers, Cotton in bales, Hat finishers (without use of fire except for heating their irons) Hardware and Cutlery, Jewellers stock, Liquors in glass unpacked, Looking glasses in boxes Manilla Grass in bales, Paints ground in oil, Paper Hangings, Potter Horses, Potash Pocket book makers stock, Printers of Newspapers Rags in packages, Sail makers, Ship Chandlers, Spirituous Liquors, Sugar makers, Stationers stock, Snuff makers, Thrashed grain Tin or Sheet Iron workers, Victualing houses Watch makers stock and tools, Wine in glass in packages, Window or Plate glass in packages

3 The following trades and occupations goods wares and merchandise are denominated extra hazardous = viz = Basket makers Straw bleachers, Book sellers stock Black-

smiths Boat builders, Brass founders, China
Earthen or Glass ware or Looking glasses un-
167 packed, Confectioners Stock, Cotton unpacked
Coopers, Copper Smiths, Druggists and Apoth-
-ecaries, Hair Dressers, Flax in Bales, Gingo makers
Gunmakers or Smiths, Grate makers, Hay
pressed in bundles, Hemp in bales, Ink makers
Lamp manufacturers, Lamp sellers stock, Lith-
ographers, Milliners Stock, Morocco manufacturers
Optical and Mathematical Instrument makers
~~Painting~~ Painters stock Perfumers Stock Plow-
shares, Pictures and prints, Painters of Books
and Jobbing, Plates and Plated ware manu-
factoins, Pocket book makers, Plumbers and
Pewterers, Saltpeter, Silver Smiths, Stables (private)
Spirits of Turpentine, Stove manufacturers,
Tobacco manufacturers, Toy Keepers stock
Type or Stereotype manufactures, Varnish
Window and plate glass unpacked -

Memorandum of Special Rates =

Bakers Bark mills Blind makers Brewers
Book binders stock, Boat Builders stock, Black-
smiths, Cabinet makers, Carpenters, Joiners
Chair or Coach makers work shops, Chemists
Cotton mills, Dyers, Forges, Fences, Frame
makers, Farriers, Fulling mills, Grist mills

Hat manufactories, House building or repairing
Ink or Ivory black or Lamp black manufactories
168 Livery Stables, Lumber or Mahogany yards
Malt houses, Metal and other Mills of all
kinds, Musical instrument makers Oil makers
Pump and block makers Shops, Paper mills
Poke makers, Saw mills, Ship builders Stock
in the yard, Ships or other vessels in port or
their cargoes or when building or repairing, Steam
Engines or Boats, Sugar refineries, Tanneries
Tallow melters or Chandlers Timber yards,
Woolen mills and generally all manufactur-
ing establishments and all trades requiring the
use of fire, heat or steam power not before en-
umerated. Burnstone works, Distilleries, Flax-
mills, Gunpowder, Oil boiling houses, Oakum
Factories, Panoramas or other Scenic paintings
Patent Leather manufactories, Sash or Sash
and blind factories, Snuff mills, Steam dye
ing mills, Tar boiling Houses, Theaters -
Turpentine manufactories, Varnish makers
Wood shavings, Book Binders Stock Paper
Shavings. Applications for insurances must
specify the construction and materials of
the building to be insured or containing
the property to be insured by whom occupied

whether as a private dwelling or how otherwise
its situation with respect to contiguous buildings
169 and their construction and materials whether
any manufactory is carried on within or about
it and in case of goods and merchandize wheth
er or not they are of the description denominated
hazardous extra hazardous or included in the
memorandum of special rates. Any misrepresen-
tation or concealment of facts or circumstances
concerning the risk on the part of the assured or
false description by the assured of a building
and its contents or the omission to make
known any fact or rumor material to the risk
or in a valued policy an over valuation shall
render absolutely ~~void~~ void a policy is-
sued upon such description or valuation. If
after insurance is effected either by the original
policy or by the renewal thereof the risk be in-
creased by any means within the control of
the assured occupied in ~~any~~ any way so as to ren-
der the risk more hazardous than at the
time of insuring such insurance shall be
void and of no effect. If during the insu-
rance any subsequent insurance should be
made upon the property hereby insured or
the risk be increased by the erection of buildings

or by the use or occupation of neighbouring premi-
170 ses or otherwise or if from any other cause the
Company shall so elect it shall be optional with
the Company to cancel this policy in which
case the Company will refund the premium
for the unexpired time -

5 No insurance whether original or continued shall
be considered as binding until the actual pay-
ment of the premium

6 Goods held in trust or on commission are to
be insured as such otherwise the policy will not
cover such property and in case of loss the names
of their respective owners shall be set forth in the
preliminary proofs of such loss together with
their respective interests therein Goods on
storage must be separately and specifically
insured

7. Policies of insurance subscribed by this Com-
pany shall not be assignable without the consent
of the Company expressed by indorsement made
thereon. In case of assignment ~~of~~ without such
consent whether of the whole policy or of any in-
terest in it the liability of the Company in
virtue of such policy shall thereafter cease
And in case of any such transfer or change
of title in the property insured by this Company

or of any undivided interest therein such conveyance shall be void and cease -

178

8 This Company will not be liable for damage to property by lightning aside from fire nor for damage occasioned by the explosion of a steam boiler nor for damage by fire resulting from such explosion unless otherwise expressly provided. The keeping of gunpowder, benzole or storage upon or in the premises insured or the lighting of the same by camphene or Spirit gas without written permission in the —— stances of the person or persons insured and has made diligent inquiry into the facts set forth in their statement and knows or verily believes that he she or they really and by misfortune and without fraud or evil practice hath or have sustained by such fire loss and damage to the amount therein mentioned and also if required shall produce their books of account and other proper vouchers and shall also if required submit to an examination under oath by the agent or attorney of the Company and shall answer all questions touching his her or their knowledge of any thing relating to such loss or damage or to their claim thereupon and subscribe such examination the same being reduced to writing and until such proofs declarations and certificates are produced and examination if required the loss shall not be deemed payable. Also if there appear any fraud or false swearing the insured shall forfeit all claim under this policy. Damage to buildings not

totally destroyed shall be appraised by dis-
179 interested men mutually agreed upon by the
assured and the Company or its agents and
where merchandise or other personal property
is partially damaged the insured shall forth
with cause it to be put in as good order as
the nature of the case will admit assorting
and arranging the various articles according
— policy shall render it void and this Compa
ny will not be liable for any loss caused by
the gross wanton misconduct or culpable neg-
ligence of the assured or by means of his in-
toxication

9 Jewels watches plate musical instruments
paintings statuary sculptures and curiosities
are not deemed to be included in any insu-
rance unless an inventory thereof accompany
the application for insurance or is inserted
in the policy =

10 In case of fire or loss of damage thereby or of ex-
posure to loss or damage thereby it shall be the duty
of the insured to use all possible diligence in saving
and preserving the property. And if they shall
fail to do so this Company shall not be held an-
swerable to make good the loss and damage
sustained in consequence of such neglect and

there can be no abandonment of the premises
11 all losses insured by this Company and sustain-
180 ing loss or damage by fire shall forthwith to give no-
tice thereof to the Company or its agent and as
soon after as possible to deliver in a particular
account of such loss or damage signed with their
own hands and verified by their oath or affirmation
they shall also declare on oath whether any and what
other insurance has been made on the same property
what was the whole value of the subject insured
what was their interest therein in what general
manner (as to trade manufactory merchandize
or otherwise) the building insured or containing
the subject insured and the several parts thereof
were occupied at the time of the loss and who
were the occupants of such building and when
and how the fire originated so far as they know
and believe and procure a certificate under the
hand of a magistrate or notary public (most
contiguous to the place of fire and not concern-
ed in the loss as a creditor or otherwise or re-
lated to the insured or sufferers) that he is acquaint-
ed with the character and circum- to their
stances and shall cause a list or inventory of the
whole to be made naming the quantity and
cost of each kind. The damage shall then be

ascertained by the examination and appraisal of said damage on each article by disinterested appraisers mutually agreed upon whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant – one half of the appraisers fees to be paid by the insurer. A copy of the policy to be given in the affidavit of the claim and in all cases

181

12 Payment of losses shall be made in sixty days after sufficient proof has been received by the Secretary in writing and in case differences shall arise touching any loss or damage it may be submitted to the judgement of arbitrators indifferently chosen whose award in writing shall be binding on the parties. In case of any loss or damage to the property insured it shall be optional with the Company to replace the articles lost or damaged with others of the same kind and equal goodness and to build or repair the building or buildings within a reasonable time giving notice of their intention so to do within thirty days after the preliminary proofs shall have been received at the office of the Company and if no notice is given by the Company of a loss within sixty days

after it occured it shall be optional with the
182 Company to reject or allow the claim or any part
thereof

13 Insurance once made may be continued for
such further term as may be agreed on the premium
thereon being paid and a renewal receipt being
given for the same and it shall be considered as
continued under the original representation in
so far as it may not be varied by a new represen-
tation in writing which in all cases it shall
be incumbent on the party insured to make
when the risk has been changed either within
itself or by the surrounding or adjacent build-
ings

14 When a policy is made and issued upon a
survey and description of certain property
such survey and description shall be taken and
deemed to be a part and portion of such policy
and warranty on the part of the insured =

15 Where property insured by this Company is dam-
aged by removal from building in which it is
exposed to fire said damage shall be borne by the
insured and the insurers in such portion as
the whole sum insured bears to the whole value
of the property insured of which proof in due
form shall be made by the claimant =

16 The company will not be answerable for any
183 loss arising from the use of fires in buildings
~~unimproved~~ unprovided with a good
substantial stone or brick chimney or
in consequence of neglect or deviation from
the laws or regulations of police made to pre-
vent accidents by fire in places where laws
or regulations on the subject exist =

17 It is furthermore hereby expressly provided
that no suit or action against said Company
for the recovery of any claim upon under or by
virtue of this policy shall be sustainable in
any Court of law or chancery unless such
suit or action shall be commenced against
said Company after the expiration of twelve
months next after such loss or damage shall
have occured the lapse of time shall be taken
and deemed as conclusive evidence against
the validity of the claim thereby or attempted
to be enforced

Jacob Spawr called
said he regretted signing the letter written by
Dement + sent to defendants and was now
willing to stand by his certificate. M. W.
Strayer who states that he was present when

Spawr gave pltff certificate of loss Robinson the agent for deft & pltff were present
184 Witness told Spawr to put his notarial seal to certificate of loss & affidavit. Robinson said never mind the company will make no objections on that account J. C. Parley in Feby 1859 just before pltff moved helped him take an inventory of stock - does not remember amt but does remember that patent medicines were in amt from 1/3 to one half of whole stock of medicines.

The foregoing was all the evidence offered in the cause both by pltff & defts. Thereupon the plaintiff moved the Court to instruct to instruct the Jury as follows -

That if by any open approach to the place of fire the residence of the Notary Spawr was nearer than any other Notary or Magistrate then his certificate is a sufficient compliance with the clause in the conditions requiring the certificate of a magistrate or notary most contiguous to the place of the fire -

That defendant cannot now raise any objections

to the preliminary proofs and certificates of loss
185 that were not specifically pointed out to plaintiff at the time of making and obtaining the same and delivering them to defendants or its agent

That if defendant placed its refusal to pay on the ground that the plaintiff set fire to the building and did not designate its objections to the preliminary proofs such ground of refusal and failure to point out defects in the proofs is a waiver of any defects in the proofs and such proofs will be considered as a substantial compliance to the conditions of the Policy—

That the condition to the policy requiring suit to be brought within one year after the loss or damage occurs is void and is no bar to the plaintiffs action—

That if the Jury believe from the evidence that the plaintiff and defendant were negotiating about the plaintiffs loss and the defendants on its part by such negotiations delayed plaintiff for a large part of the year following the loss then even if the conditions requiring suit to be brought within the year be valid under such

156

circumstances defendant cannot set up such conditions to defeat plaintiffs suit=

That if the defendants by its agents received plaintiffs preliminary proofs of loss under the policy and its conditions the defendant cannot afterwards reject such proof unless it pointed out specifically to plaintiff the defect or omission complained of —

That if defendants agent assisted the plaintiff in making out and preparing the proofs of loss - and the inventory and appraisement of damages and took the same and delivered them to defendant the defendant cannot now object to any mere formal defects in such proofs -

That in order to relieve themselves from liability under their Policy on the ground that the plaintiff fired the building in which the goods were the defendants must prove to the satisfaction of the Jury beyond a reasonable doubt that plaintiff committed the act or procured it to be done

1876

If the jury believe from the evidence that plaintiff in good faith believed his stock books &c to be with the amounts represented to the Company then there is no fraud on plaintiffs part in that respect

That if they believe from the evidence that the defendant insured the stock of drugs instruments and library of plaintiff against loss or damage by fire and that the said stock of drugs instruments and library were damaged by fire during the time for which they were insured and that plaintiff on his part has substantially complied with the conditions of the policy of insurance and used no fraud in obtaining the policy then the jury will find for plaintiff the amount of such damages proven unless they further believe from the evidence that plaintiff set fire to the building or goods or caused the same to be done

To the giving of all said instructions the said defendants excepted And thereupon the Court gave at the request of the defendant the following instructions to the

188 Jury =

If the Jury believe from the evidence that said plaintiff by the application read in evidence falsely represented to the defendant that the value of his stock of drugs & medicines & surgical instruments & library were of the value of $4400- or upwards when in truth & fact they were worth materially less in value than plaintiff represented them then the Jury will find for the defendant —

If the Jury believe that the evidence does not substantially prove the allegation of the declaration they will find for the defendant =

If the Jury from the evidence believe that there were threats made about burning Whitehills store, that Whitehill had heard & had reason to believe them before he took out the policy then it was his duty to disclose the fact of the threats to the Company & if he did not do it it is a fraud on the Company that renders the policy void =

If the Jury believe from the evidence that the plaintiff caused the fire

189

himself they will find for the defendants - and in arriving at a conclusion on this point it is the duty of the Jury to take into consideration all the evidence of the case -

And then upon the defendants requested the Court to give the following instructions to the Jury -

That it is immaterial in this case whether Whitehill believed his stock of drugs Surgical Instruments & library were worth the amount he represented them to be & if they same were not in fact worth what he stated them to be in his application & the Jury so find from the evidence they will find for the defendant -

If the Jury believe from the evidence that it was one of the conditions annexed to the policy that no suit or action against said defendant by the said plaintiff for the recovery of any claim upon under or by virtue of said policy should be sustained in any Court of law or Chancery unless such suit should be commenced & with in the term of twelve months from ~~date~~ and after any loss or damage shall occur

And if the Jury further believe that this

190

suit was not commenced within twelve months from the time of the fire then the Jury will find for the defendants -

~~And~~ Which the Court refused to give to the Jury to which refusal of the Court the defendants excepted

On the Jury returning a verdict for the plaintiff and on the same being entered by the Court the defendant by their counsel moved the Court to set aside the verdict of the Jury and grant a new trial and filed said motion in writing as follows to wit

James C. Whitehill
vs
The Peoria Marine & Fire Ins Co

In the McLean Circuit Court = In Debt

And the said defendants move the Court now here to set aside the verdict herein and grant a new trial for the following reasons -

1st That the Court erred in admitting improper evidence

2nd That the Court erred in giving improper instructions for the plaintiff to the Jury & refusing proper instructions asked for by the defendants

Damages & Costs for defts

191

Which motion the Court overruled to which ruling of the Court the Defendant then and there excepted - And thereupon the said defendant moved the Court in arrest of Judgement on said verdict of the Jury and filed the motion in writing as follows to wit=

James L. Whitehill

vs

The Peoria Fire & Marine Ins Co

In the McLean Circuit Court - In Debt -

The said defendants move the Court in arrest of the jud'gt on the verdict in the above cause for the reason = That the plaintiffs declaration affirmatively shows that the plaintiff has no cause of action as to the first Count & as to the second Count that no evidence was offered on the trial that could properly apply to the second Count

Hannah & Scott
- pr defts -

Which motion the Court overruled to which ruling of the Court the defendant then and there excepted = The defendant asks that this their Bill of Exceptions be signed sealed

and made a part of the record of this cause which is done in open Court

David Davis (Seal)

And thereupon afterwards at said December Term of said Court to wit on the 31st day of January A.D. 1865 further order was made by said Court in this cause as appears of record to wit

James C. Whitehill

vs

The Peoria Marine & Fire Insurance Company In Dep't

And now at this day again comes the said defendant by its attorneys and prays an appeal to the Supreme Court of this State in this cause and the same is granted upon the filing of an appeal Bond with Isaac Underhill & Sidney Pulsifer as Securities in the penal sum of Twenty five hundred dollars conditioned as the law directs And upon the agreement of plaintiff's attorney thirty days are allowed said defendant in which to perfect said Bond and file the same —

182 ~~and made a part of the record of this cause~~
~~which is done six days Court~~

David Davis (Seal)

And thereupon afterwards to wit on the 5th day of February A.D. 1861 came the said defendant and filed herein its appeal Bond for an appeal to the Supreme Court which Bond was in words and figures as follows to wit =

Know all men by these presents that we the Peoria Marine and Fire Insurance Company as principal and Isaac Underhill and Sidney Palsifer as sureties are held and firmly bound unto James L. Whitehill in the penal sum of Twenty five Hundred dollars for the payment of which well and truly to be made we and each of us bind ourselves (and we the said Isaac Underhill and Sidney Palsifer also bind our heirs executors and administrators) jointly and severally and firmly by these presents Sealed (with the corporate seal of the said Peoria Marine and Fire Insurance Company and attested by Charles Holland Secretary thereof) and with the seals of the said Isaac Underhill and Sidney Palsifer and

183 dated at Peoria this Second day of February A.D. 1861. The conditions of the above obligation is such that whereas the above bounden James L. Whitehill did on the twenty fifth day of January A.D 1861 at a Term of the Circuit Court then being holden within and for the County of McLean and State of Illinois obtain a Judgement against the above bounden ~~James~~ The Peoria Marine and Fire Insurance Company for the sum of Ten hundred and fifty six dollars and forty one cents debt and one cent damages and costs of suit from which judgement the said Peoria Marine and Fire Insurance Company has prayed an appeal to the Supreme Court of said State which has been allowed. Now if the said The Peoria Marine and Fire Insurance Company shall duly prosecute said appeal and shall moreover pay the amount of the judgement costs interest and damages rendered and to be rendered against it the said The Peoria Marine and Fire Insurance ~~Company shall duty~~ company in case the said Judgement shall be affirmed in the said Supreme Court then the above obligation to be void and void otherwise to remain in full force and virtue

184.

Attest
Chas Stoddard
Secty Peoria Marine
& Fire Insurance Co

The Peoria Marine and Fire Insurance Company

Isaac Underhill
Sidney Pulsifer

L.S.
Seal
Seal

State of Illinois
McLean County } ss I Wm McCullough Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true and complete Transcript of the records and files of my office pertaining to a certain cause wherein James L Whitehill was Plaintiff and the Peoria Marine & Fire Insurance Company were Defendants -

Given under my hand and the seal of said Circuit Court this 20th day of March A.D. 1854 =

Wm McCullough. Clerk

By Luman Burr. Deputy

Received of the attorneys of the Peoria F. & M. Ins. Co. Twenty Eight Dollars in full of costs of this Transcript

Wm McCullough. Clerk

By L. Burr. Dpty

247

The Peoria Marine
& Fire Insurance Company

vs

Thomas C. Whitehall

Filed April 12, 1861
L. Leland
Clerk