No. 12739

Supreme Court of Illinois

Dix et al

vs.

Chicago City Ins. Co.

71641

68

68

1739

Prefaced

1859

United States of America
STATE OF ILLINOIS, COUNTY OF COOK, S. S. } Pleas, before the Honorable George [illegible]

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the [illegible] Monday, (being the [illegible] day) of [illegible] in the year of our Lord one thousand eight hundred and [illegible] and of the Independence of the said United States the [illegible]

Present, Honorable George [illegible] Judge of the 7th Judicial Circuit of the State of Illinois.

[illegible] States Attorney.

[illegible] Sheriff of Cook County.

Attest: [illegible] Clerk.

(12337-J)

2 Be it Remembered to wit: that on the 27th day of June AD 1857 there was filed in the office of the Clerk of the Circuit Court of Cook County in the State of Illinois a certain Bond for Costs which is in the words and figures following to wit:

Cook County Circuit Court. October Term 1857

[illegible] [illegible]
Joseph E. Ricketts [illegible]
George J. Harris
to the use of
James E. Southworth and
admr. Sherman Putnam Southworth and
Henry Harrington Jr.
vs
Chicago City Insurance Company of Chicago Illinois

I do hereby enter myself security for costs in this cause and acknowledge myself 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

[2739-2]

Ordinance of the laws of this State

Dated this 2nd day of June A.D. 1857

S Bentley

Clerk

Clerk aforesaid to wit: on the 24th day of June A.D. 1857 then and there filed in the office of the Clerk of the Circuit Court aforesaid a certain "Bond" which is in the words and figures following to wit:

Cook County Circuit
Court October Term A.D. 1857

Cook Co Dr
Hiram G Strickland
George C Howes
In the case of
Simon E Strickland
Gilbert Shaw
Nelson Southworth &
Henry Pierrepont Jr

Obverse Side Summons
Conspiracy & Damages

The Obligation of this Bond is such that whereas at the October Term next

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C Beatty &
Attorney Lazzell
Plaintiffs Attorney

Court aforesaid to be held on the 1st
day of June A.D. 1857 then
& there and of the Office of
the Clerk of the Circuit Court of
Cook County in the State aforesaid
the Declaration in said
Cause, called Summons
which is filed in the said
Court & issue thereon according to law

State of Illinois }
County of Cook } ss.

The People of the State of
Illinois, to the Sheriff of said
County. Greeting:

We command you
that you Summon Chicago City
Railway Company of Chicago
Illinois if he shall be found
in your County personally to be
and appear before the Circuit
Court of Cook County, on the
first day of the next Term
thereof, to be holden at the
Court House in Chicago, in

D-7737-5

said County on the Second
Monday of October next to
recover said Sum of Dollars
Costs & Charges
Costs for case of James E.
Southworth Albert Stevens
Solomon Southworth and
Henry Farrington &c in a plea
of Trespass on the Case on
promises to the damage of
the said Plaintiff &c as
said in the Sum of Six
Hundred Dollars

And have you then
and there this said writ
with Endorsement thereon
in what manner you
shall have executed
the same

Witness William L Church
Clerk of our said Court at
the Seal thereof at Chicago
aforesaid this Ninety Second
day of June A.D. 1857

Wm L Church
Clerk

And the said Defendants
said Seal Attachment on the
back whereof are in the words

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and Injunction following to wit:

Served by leaving a true and
Certified Copy of the within
named Complaint with the Secretary
of the within named Company
at Clinton Scott County Iowa
this 6th day of August 1857

Fees 2 Services 100 $1.00
1 Copy .50 .50
2 Writs .10 .20
1 Return .10 .10
$1.80

John L Wilson Sheriff
By John L Dent
Deputy

And afterwards to wit on the 2nd
day of October A.D. 1857 there
was filed in the Office of
the Clerk of the Circuit Court
of said County in the State
aforesaid a certain Declaration
which is in the words and
figures following to wit:

In the Circuit Court
of said County of the
October Term A.D. 1857

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State of Illinois
Cook County } ss

In the
Superior Court
of said County

Of the
September Term
A.D. 1856

Samuel Southworth and
George S. Adams Plaintiffs
in this suit for the
use of James G. Southworth
Gilbert Stearns Jabez
Southworth and Henry
Stanwood &c. Carrying on
business under the name and
Style of Southworth Stearns &
Co. by Cyrus Bentley their
Attorney Complain of Chicago
City Insurance Company
a Corporation Established and
Existing under the laws of the
State of Illinois Defendants
in this suit. Into Court
summoned &c of a Plea of Trespass
on the Case upon promises &c
That whereas heretofore to wit
on the third Monday in the
September A.D. 1856 at
Chicago to wit, at the
County of Cook aforesaid by
a certain Instrument of
Policy of Insurance then and
there made under the hands

of Edward Campbell the President
and Henry Brandt the
Secretary of the said
Corporation of Chicago
Plaintiff the said Edward
Campbell and Henry Brandt
acting and being duly authorized
for and on behalf of ~~the~~
the said Corporation the
said the Chicago City
Improvement Company in
Consideration of Ship Sum
of Ten Dollars to them paid
the receipt whereof was
hereby acknowledged doth
hereby agree to release the
said Plaintiff by which the
name in Style of Rail
Spectator & Mail Extended
hope to damage by said
of the Sum of Three
Hundred Dollars on that
Block of Ground Contained
in Each Building Situated
on and Known as Lots
South Water Street Chicago
and for valuable Consid-
ration Dry Goods Boots
and for Purpose of Having

Steaming and working together
Steam Basement and for
Bottling Porter & Ale and
the said Company Thereby
promised and agreed to
make good unto the said
Assured According to the
Conditions annexed to said
Policy their Executors
Administrators and Assigns
all such Loss or Damage not
Exceeding in Amount the
Sum insured as Special
Contribution by Jane to the Property
as above Specified from the
Third Second Day of September
One Thousand Eight Hundred
and fifty six (at Twelve
O'Clock at noon) unto the
Said Second Day of September
One Thousand Eight Hundred
and fifty seven (at twelve o'clock
at noon) the said Loss or
Damage to be Estimated
According to the True and
Actual Value of the Property
at the time the same
Should happen and to be
paid within Sixty Days

after notice and proof
thereof made by the assured
in Conformity to the
Condition annexed to said
Policy provided always
and it was thereby declared
that the said Company
should not be liable to make
good any loss or damage by
fire which might happen
or take place by means of
any invasion insurrection riot
or civil Commotion or of any
usurped power or
any loss by theft before actu-
ally or fire and provided
further that in case the
assured should have any
other insurance against loss
by fire on the property thereby
insured not notified to the
said Company and mentioned in
or indorsed upon said Policy
then the said insurance should
be void and of no effect
But it was also thereby also
declared that if other insurance
was Bona fide made without
notice such insurance

11 the assured thereby covenants & agrees
& agrees that the representations
given in the application for
said insurance contained
is just full and true
exposition of all the facts
and circumstances in regard
to the insured situation and
value of the property intended to
be insured as the same were known
to the assured and is
material to the risk or the
interests of the assured in the
subject insured and that if
any material fact or
circumstance should not
have been represented the said
assurance is void & the said
assured or their agents shall
have power to make any other
assurance in the same office
to cover the same or the
insurance. Sufficient to
declare the interests of the
insured in the same only & not
to enter the amount insured
and should not agree
immediately to said Company the same

the same directed as said
12 instruments in obedience
as shall be by them
certify the said Policy
should cease and determine
further Effect and in case
of any insurance upon the
property thereby insured
subsisting prior or subsequent
to the date of the said
Policy the Assured should in case
of loss or damage be entitled
to claim or recover of said
Company any greater portion
of the loss or damage
sustained than the amount
thereby insured should bear to
the whole amount insured
on said property and
whereas the said Company
should pay any loss the
assured agreed to assign and
do their rights to recover
satisfaction thereof from
any other person or persons
firm or other corporation or
to prosecute therefor at the
charge and for the benefit
of the said Company of

13

equitable construction extended
and declared to be the true
intent and meaning of the
parties to said policy that
in case the above described
premises should at any time
after the execution
thereof the insurance of the
said insurance be appropriated
applied or used to or for the
purpose of carrying on or
exercising therein any trade
business or vocation thereinafter
prohibited or specially hazardous
or specially hazardous in the
recommendation of rates and
rates annexed to said policy
or for the purpose of storing
keeping or vending therein any
of the certain goods or
merchandize in the contract
thereof aforementioned or
otherwise specially provided
for or through the agreed to
by the said Company in
writing and attached to
or endorsed upon the said
policy then and from

14

Some proper to be done on the
Same should be appropriate
explained or read. Said policy
should come and be of no
force or effect and Done
Further Declared that the
Said Insurance was not
Effected) To apply to or
Com any Books of Record
Written Securities, Deeds or
other Evidences of Title to
Lands nor to Lands Tenements
Rents or other Endowments of
Which are to be Money or
Bullion And that the said
Policy was made and
Accepted) in Reference to
the Conditions Hereof Should
Which Should be read and
Inserted to the Order to
Explain the rights and
Obligations of the Parties
Hereto as are Com and Usual
Therein Specially provided
for or by the said Insurance
or Policy of Insurance Reference
being thereunto had will more
fully Appear and the said
Plaintiffs in fact say that the

15 Geo.) Conditions annexed to said
Lottery on (Prizes of Three)
Pounds to said

Applications for insurance
on property must be in writing
and specify the Constructions and
Materials of the Buildings to be
insured & containing the
property to be insured; the
Interests of Applicants therein
by whom Occupied whether
Owner or Private Dwelling
Store Tenement; its Situation
with Respect to Contiguous
Buildings and their Constructions
& Materials whether any
Manufactory &c. Carried on
therein & what Steam
used in Case of Goods &
Merchandize in Particular
Description of their Kind
Classification & Value
and in Case of Household
Goods, Wearing Apparel
Linen Wearing Apparel
& Movable & Fixtures
of any Kind, a Specification
must be made of Each

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If any fire commences by the
explosion of a building or by its
Contents or the occupation to
which there may be added
Insurance to the Sum of
Called Policy on the Insurance
Shall become absolutely void
& Policy effected upon such
Description or Valuation Shall
the Office may be discharged
for the Discovery of the Same
made by its Agents But if
upon the Insurance is
effected Either by the Policy
or by the General Terms of the
Sale be increased by any
means within the Limits
of the Explosion or if such
Buildings or Premises there
be Sold the Explosion of the
Explosion occasioned by any way
so as to become the Sale void
Regardless Upon all the Terms
of Insurance Such Insurance
Shall be void And of no
Effect or during the Insurance
any Subsequent Insurance
Shall be made upon the
Property hereby insured

which such the sum already
insured should in the opinion
of the said Company Warrant
it can any increase of
the risk be incurred by
the Erection of Building or
by the use or occupation
of neighbouring 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 after
notice given to the assured
or his representative of their
intention to do so in which case
the Company will refund
the premium for the
unexpired term
If Policies of insurance
issued by this Company
shall not be assignable
without the consent of the
Company Assignment by
indorsement made thereon
In case of assignment
without such consent
the whole policy
or any interest in it shall

liability of the Company
in virtue of such policy
shall thereupon cease
and in case of any transfer
or change of title in the
property insured by the
Company or of any
individual interest therein
such insurance shall be
void: and cease
12 In case of fire or loss
or damage thereby or explosion
by 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 fail to do so
this Company shall not
be held answerable to make
good the loss and damage
sustained in consequence
of such neglect
13. All persons
insured by this Company sus-
taining loss or damage
by fire are forthwith to
give notice thereof to the
Company and within sixty

days thereafter Claims to
a particular account of
such loss or damage
signed by their own hands
and certified by their oath
or affirmation and also if
required by their books of
accounts and other proper
vouchers, and permit
extracts or copies to be
made they shall also
declare in what manner
they and what other insurance
shall been made on the
same property what was
the whole value of the subject
insured what was their
interest therein and if Gross
sold in trust or commission
or otherwise the names of the
respective owners and their
respective interests therein in
what General manner
the trade manufactory
Merchandize or utensils in
the building insured or
containing the subject
insured and several parts
thereof was occupied at

the time of the loss and
also were the Occupants
of such Building and also
and also how the fire originated
so far as they Know or
believe and also as to Cause
of personal property for loss
which Claim is made
Either Destroyed or damaged
in Consequence of fire and
to their Knowledge or belief
was and Published in
Otherwise Disposed of either
before or during such fire
they shall also procure
a Certificate under the
Hand of a Magistrate
or Notary Public (if
Practicing to the Place of the
fire and not Connected to
the Loss as Creditor or
Otherwise or related to the
Insured or Sufferers) that
they have made due Enquiry
into the Cause and origin
of the fire and also as
to the Value of the property
Destroyed and that
Deponent and the
Aforesaid Insured the

21 Character and Circumstances
of the Person injured and
the Room or Cavity wherein
they may be and the Cause
and by Misfortune and
Wilfull Fraud or Evil practice
Deeds or Store Sustained by
such Loss or Loss and Damage
& the Amount thereof
Instituted and also Shall
if required Attend to
the Examination under
oath by the Agent or
Attorney of the Company
and answer all questions
touching Such as to their
Knowledge of any things
relating to such Loss or
Damage or to their Claims
thereon and subscribe such
Examination the same being
reduced to writing & and
until such proofs
declarations and Certificates
are produced and Examinations
if required the Loss shall
not be deemed payable
and also if such appear
required or false Swearing

the insured Shall sustain
any Claim under this Policy
upon Merchandize and
other personal property in
Boatsail Carriage the
insured Shall produce
Such Bill to be paid in as
Good order as the nature
of the Case will admit
applying and arranging the
Various Articles according to
their Kinds and Shall
Cause a bill or invoice
to be made mentioning the Qua
and quality of Each Kind
The Claimage Shall be
ascertained by the Examination
and Ackowledgment of Each
Article by disinterested
Referees. Which Shall be
upon one body the Expence
to be paid by the Insured
A Copy of the written
portion of the Policy to be
given in the Office and
the Claimant to pay one
Shilling & Sixpence for
Each Copy
Any Alterations or Amendment of the same
Shall be made by the

or three Competent persons
to be one act in any way
interested in the same nor
in any Degree Connected
with the insured to be
Mutually appointed by the
insured and the Company
or their Agent the respect
of such Ascertainment shall
be in writing Underwritten
and must form part of
the Preliminary Proofs
aforesaid

12 Payment of Loss
Shall be made within Sixty
Days after such proof
and Adjustment Thereof
and in case Differences
Shall arise touching any
Loss or Claim to any be
Submitted to the Judgment
of Arbitrators indifferent by
them whose award in
writing Shall be binding
on the parties —

13 And which said
Conditions and all the
other Conditions annexed to
these Policy are annexed

to the Declaration by Copy of
24 the Same taken from said
Instruments.

Of which said
Instruments or Policy of
Assurance and the Conditions
Therein annexed the said
Defendants Afterwards had
on the Day and Year
first aforesaid. At the
County aforesaid had notice
and Thereupon afterwards to
wit on the Day and Year
last aforesaid at the County
aforesaid in Consideration
that the said Plaintiffs at
the Special instance and
request of the said Defendants
had then and there paid
to the said Defendants the
said Sum of Sixty seven $ 67/100
Dollars as a Premium
for the insurance of Three
Thousand Dollars upon the
Stock of Groceries mentioned
in the said Instruments
or Policy of Insurance
and had the said Risk then
undertaken and faithfully

to the Declaration by Copy of
24 the Same taken from said
Instruments.

Of which said
Instruments or Policy of
Assurance and the Conditions
Therein annexed the said
Defendants Afterwards had
on the Day and Year
first aforesaid. At the
County aforesaid had notice
and Thereupon afterwards to
wit on the Day and Year
last aforesaid at the County
aforesaid in Consideration
that the said Plaintiffs at
the Special instance and
request of the said Defendants
had then and there paid
to the said Defendants the
said Sum of Sixty seven $ 67/100
Dollars as a Premium
for the insurance of Three
Thousand Dollars upon the
Stock of Groceries mentioned
in the said Instruments
or Policy of Insurance
and had the said Risk then
undertaken and faithfully

promised the said Defendants to perform and fulfill all things in the said Policy and the Conditions hereunto annexed Contained on their part and behalf to be performed & fulfilled they the said Defendants undertook and then and there faithfully promised the said Plaintiff that they the said Defendants would upon the said Plaintiff duly proving their damage by Oath to the amount of Three Thousand Dollars upon the said Risk & Interests and pay and satisfy all things in the said Instruments & Policy of Assurance Contained on their part and behalf to be performed and fulfilled and the said Plaintiff in fact further say that they the said Plaintiff at the time of making the

the Said Bailey of Swansea
and from thence until the
twenty Day of February
A.D. 1837 have Purchased
Jointly or Separately in
the Said Joint Stock of
Groceries to the Amount or
Value of Five Thousand
Pounds or thereabouts
Caused to be Insured Twenty
Pounds in the Said Said
Mentioned Day the Interest
of the Said Sinclair Thomas
was Sold and Transferred
to the Said Dix Parties
and they from the Said
Said Mentioned Day until
the Left and Damage
Herein after Mentioned the
Said Plaintiffs Dix Parties
Hereto have Jointly
Interested Themselves to the
Amount or Value aforesaid
to Wit at the County
aforesaid and they the
Said Stock of Groceries
in the Said Policy Mentioned
afterwards to Wit on the
Second Day of March in the

27 to wit
At the County aforesaid & was
found Covenant and
Discharged by Jury and Thos
as Said Thereof was Lost
by Shepp## and the Said Jus
Clive not Desirous or Liable
Justice by means of any Insolvency
Insecurities and or Civil
Commotion or of any hostility
or Usurped Power or by
the Explosion of a Steam
Boiler or by Conflagration or by
the Explosion of Gun powder
whereby the Said Plaintiffs
Then Could Then Sustained
Damage and Loss according
to the Truth and Actual Cost
value of the Property at the
Time the Said Jus
Insured to be Lost and
to pay to the Assured of the
Said Sum of Three Thousand
Dollars in respect of the
said Ship or Vessel
so found and Covenanted
as aforesaid and Upon and by
all other Insurances on the
said Ship and the
said Plaintiffs further

they shall the said Defendants
shall not at any time
after the making of the
said Policy and before
the sailing or departure
therein mentioned
receive back out of any
other Insurance on the said
Goods or Goods to the said
Assureds and shall the
premium mentioned in
the said Policy and not
or any part after the
making and during the
Continuance of the said
Insurance contemplated
exhibited or used to or for the
purpose of Carrying on or
Conducting Thereon any
Trade Business or Occupation
Commonly Hazardous or
Extra Hazardous or Specified
in the Recommendation of
Special rates in the Conditions
annexed to the said
Policy or for the performance
of Doing causing or suffering
Thereon any of the Articles

29 goods or merchandize in the
Condition of aforesaid
Memorandum of Hazardous or
Extra hazardous as included
in the Memorandum of
Special rates And the
said Plaintiffs in fact
further say that the
said State of Tennessee
in the said policy mentioned
and the Building containing
the same were duly described
and represented to them
duly true and so as to cause
the said insurance to be
Effected upon as lower
premium than it ought to
have been and that during
the Continuance of the said
insurance the risk incurred
at any time increased by
any means within the
Control of the said
Plaintiffs nor was the
said Building occupied in
any way so as to render the
risk more hazardous than
at the time of insuring
And that the said Plaintiffs

30 did forthwith after the said loss or damage to wit on the 16th day of March 1883 at the County aforesaid give notice thereof to the said Defendants and did also as soon after as possible to wit on the 16th day of March aforesaid at the County aforesaid deliver in particulars thereof of such loss or damage signed and verified as required by the said Conditions and did also before or at the said time of giving such notice as aforesaid deliver to the said Defendants a statement setting forth the whole value of the subject insured and what was the Interest of the Plaintiffs therein or what general account the Building containing the subject insured, and the several parts thereof were occupied at the time of the loss and to what the several amounts of such building and value

[illegible]

31 and that the said Defendant
may for the better Knowledge
be heard and that proper
and Orders to the said
Defendant such Certificate
under the Seal of a
Notary Public as aforesaid
of the said Conditions and
Provisions duly and willingly
to produce their Books of
Accounts and all proper
Vouchers and Papers Extracts
or Copies to be made and
to submit to an Examination
under oath and to answer
all questions touching their
Knowledge of any thing
relating to such Loss or
Damage or to their Claims
Thereby and upon such
such Examination the same
Cause referred to Master,

Further ## That the said
Plaintiff may have all and
Manner Compound Remedies
to and against all and
singular the said Articles
and Stipulations Conditions
matters and things herein

82 in their part more to be
recorded and performed
according to the Tenor &
and Effect of the said
Policy and of the said
Condition Hereunto annexed
and also the Stock and
Fund of the said Company
always from the time
of undertaking the said Policy
~~Loss~~ liable to have been
and yet are subjected
to pay to the said Plaintiffs
the said Damage and
loss sustained by the said
fire and within Sixty
Days after notice and
proof thereof made by
said Plaintiffs and
received by said Defendants
at their Office in
Company to the Condition
annexed to said Policy
first duly executed upon
the Commencement of the
said fire by reason of which said
Insured premises the said
Defendants afterwards
to wit on the day and year

last aforesaid at the County
aforesaid said notice and
case then and there
required by the said
Plaintiff to pay
him the said
sum of Three Thousand
Dollars and by them tendered
as aforesaid but the said
defendants not regarding
their said promise and
undertaking so by them
made as aforesaid did
not nor would when they
were so required as
aforesaid or at any
time since pay
the said sum of Three
Thousand Dollars or any
part thereof but have
hitherto wholly neglected
and refused so to do and
still neglect and refuse
so to do. To the damage
of the Plaintiff
aforesaid

And also for that
whereas heretofore to wit
on the 5th day of December
A.D. 1856 at Chicago to wit
at the County of Cook aforesaid

By a certain other instrument
in writing of somewhat the
same tenor and date with
the said Bond of Edmund
Conyers the said and
Henry Brandt the Secretary
of the said Corporation of
Chicago Covenant the said
Edmund Conyers and Henry
Brandt acting and being
duly authorized for and on
behalf of the said Corporation
The said Chicago Life
Insurance Company in
Consideration of the Premium
& Sum paid by the said
Plaintiff the receipt whereof
was thereby acknowledged
did thereby agree to insure
the said Plaintiff by
their then name or Style
of Corporate Existence against
any loss or damage
by fire to the extent of
the penalty sum of
Two thousand Dollars on
their Stock of Merchandize
Groceries, Liquors and Tobacco
Contained in the Brick

35 Building situated on South Water Street, known as No 20 in the City of Chicago State of Illinois and the said Corporation should proceed and Agreed to make Good unto the said aforesaid their Executors administrators and assigns according to the Conditions thereof aforesaid and such loss or damage and Exceeding the sum insured as should happen by fire to the property aforesaid from the [illegible] of December one thousand Eight hundred and fifty three (at twelve O'clock at noon) until the 15th day of February one thousand Eight hundred and fifty four (at twelve O'clock at noon) the said loss or damage to be Estimated according to the value and actual value of the property at the time the same should happen and

to be paid within Sixty
Days after notice and
proof thereof made by
the assured in conformity
to the conditions annexed
to said Policy provided
always and it was thereby
declared that the said
Company should not be liable
to make good any loss
or damage by fire which
might happen or take place
by means of any invasion
insurrection riot or civil
Commotion or of any usurped
or usurped power or any loss
by theft happening after or
after fire and it was further
provided that in case the
assured should have any
other insurance effected
upon the premises
insured thereby not notified
to the said Company and
indorsed on or Endorsed
upon said Policy then
said insurance should be
void & of none Effect and
the assured thereby Contracted

37 I Engage that the Representation
given in the Application
for said Insurance contains
a just full & true Exposition
of all facts and Circumstances
in regard to the Condition
Situation and value of the
Property insured so far as
the same were known to
the Assured and more
material to the risk or
nature of the Risque
in the Subject insured and
that if any material fact
or Circumstance should
not have been represented
as aforesaid or if the Assured
or their Agents
Thereafter make any other
Insurance on the same
Property or suffer the same
to be Encumbered Assigned
to reduce the Interest of the
Insured in the same any
Event to or below the Amount
insured I shall not Give
immediate notice thereof to
the said Company & have
the same Endorsed on said

Instrument or otherwise
or Assembled by them in
writing the said Policy
should cease & be of no further
Effect and in case of any
Assurance when the Premium
thereby insured or the Interest
or Contingency to the Risk
of the said Policy the
Assured should not in case
of loss or damage be
entitled to demand or
receive of said Company
any greater Portion of the
loss or damage sustained
than the Amount thereby
insured should bear to the
whole Amount insured on
said property and whenever
said Company should pay
any loss the assured upon
it signing over all their
right to recover satisfaction
therefor from any other
person or persons firm or
other Corporation, or to
prosecute therefor at the
Charge and for account
of the Company if required

And it was declared and
agreed to be the true intent
and meaning of the
parties to said Policy
that in case the above
mentioned premises should
at any time after the
making and during the
Continuance of said
Insurance be otherwise
Occupied or used than as
aforesaid or in case the
Buildings or erections thereon
or Specially hazardous
the memorandum of which
is hereunto annexed to said Policy
or for the Purpose of storing
Keeping or vending thereon
any of the Articles Goods
or Merchandize in the
Conditions thereof excepted
as aforesaid unless therein
otherwise specially provided
for or thereafter agreed to
by said Company in writing
and added to or endorsed
upon the said Policy then

and from thenceforth so long as the same should be un-
satisfied and said Covenants should
cease and be of no force
or effect And it was
hereby declared that
said assurance was not
intended to apply to or
cover any Deeds of record
or other Evidences of title to
lands nor to lands title
to which or other Evidences of
which may be necessary or
desirable And that said
policy was made and
accepted in reference to
the conditions herein contained
which should be read as
essential to and to govern the
Construction of rights and
obligations of the parties
hereto in all cases but
therein otherwise specially
provided for as by the said
instrument or policy of Insurance
reference being thereunto had will
more fully appear And the said

(24139-2)

41

Plaintiff in fact say that
the Conditions annexed to the
said said mentioned Policy are
the same in Every respect
as those annexed to the
Policy first herein ~~after~~ before
stated & set forth and contain
amongst other Conditions similar
in Every respect to the Conditions
herein before set forth of
which said instrument or Policy
of Insurance and the Conditions
thereto annexed and the
said Obligation the said
Defendants Afterwards
to wit on the day and
year first in this Count
mentioned at the County
aforesaid had notice ——

And thereupon
Afterwards to wit on the
day and year last aforesaid
at the County aforesaid in
Consideration that the said
Plaintiff at the special
instance and request of the
said Defendants had then and
there paid to the said
Defendants the said Sum of Nine

Dollars as a premium for the
42 insurance of One Thousand
Dollars upon the Stock of
Wholesale Groceries wines &
liquors mentioned in the
said instruments or Policy
of Insurance and had then
and there undertaken and
faithfully promised the said
Defendants to perform and
fulfill all things in the
said Policy and the conditions
thereunto annexed to be
performed & fulfilled by the
said Defendants undertook
and then and there faithfully
promised the said Plaintiffs
that they the said Defendants
would & upon the said
Plaintiffs against loss or damage
by fire to the amount of One
Thousand Dollars upon the said
Stock of Wholesale Groceries
Wines & liquors and would
perform and fulfill all
things in said instruments
or Policy of Insurance
Contained on their part and
behalf to be performed and

(12797-21)

Jacksfield and the said Solomon
on each and on the day there
they the said Plaintiffs
at the time of making
the said Policy of Insurance
and from thence until the
hereby day of February aforesaid
were interested jointly as
Copartners in the said
insured Stock of Groceries
Wines & Liquors to the
amount or value of one
thousand pounds by them Insured
or caused to be insured
therein that on the said
said mentioned day the Ship
& the Goods aforesaid
sailed and departed to said
Port of Ocracoke and they from
the said said mentioned day
until the loss and damage
hereafter mentioned the
said Plaintiffs Dix & Hearn
were jointly interested
therein to the amount or
value aforesaid. And the
Ocracoke aforesaid and
that the said Stock of
Wholesale Groceries Wines

Legacy of the said Bridget
mentioned Aforesaid to said
On the Second day of March
A.D 1857 to said Ct the
Circuit Aforesaid has been
Discovered and discharged by
Jaw could take no Proof
thereof was had by Depth
and the said Jaw does not
Interfere or Take Place
by means of any Invasion
Insurrection Riot or Civil
Commotion or of any Military
or usurped power or by
the Explosion of a Steam
Boiler or by Conflagration or by
the Explosion of Gunpowder
Whereby the said Policy
then and there Insured
Claimage and Loss
According to the true and
Actual Cash value of
the property at the time
the said Jaw Happened
to a Large Amount to wit
to the Amount of the said
Sum of Two Thousand Dollars
to Expand on the said Ship
of Insurance Grounds, Hence,

[illegible]

Assigns do hereby and Promise
and Agree to and with the said
other Insurance Office and
the said Plaintiffs further
say that the time of the making
of the said Policy the the
said Plaintiffs had not any
other Insurance by which
by Loss or the Property there
insured Exceeds as herein before
mentioned Notified to said
Company and that after
the making of the said
Policy they did not make
or Effect any other Insurance
on the same Property Exceeds
as Notified to said Company
and that the Premises mentioned
in the said Policy were not at
any time after the making and
during the Continuance of the
said Insurance Appropriated
Applied or used to or for the
Purpose of Carrying on or
Exercising there any Trade
Business or occupation Commonly
Exercised as Extra Hazardous
or Specified in the Memorandum
of Special Risks in the

Conditions annexed to the
said Policy upon the
Forfeiture of Money arising
or Resulting therefrom any of the
Certain Goods or Merchandize
in the Conditions specified
Commonly called Hazardous
or Extra Hazardous or
included in the Memorandum
of Special Rate and the
said Defendants further
say that the said Stock
of Goods and Effects Wares
& Things in the said Policy
mentioned and the Building
Containing the same were
duly Examined and
Otherwise than they really
were or so as to cause the
said Insurance to be Effected
upon a lower Premium than
it ought to have been and
that during the Continuance of
the said Insurance the said
Risk was not any time increased
by any means within the
Control of the said Plaintiffs
Nor was the said Building
Occupied in any way so as to vitiate

[illegible]

the said same Defendants from
at the time of issuing said
Writ the said Plaintiffs did
sustained after the said
loss or damage to wit
on the 10 day of March
A.D. 1851 at the County aforesaid
Give notice thereof to the said
Defendants said did also
as soon after as possible
to wit. on the 12th day of
March aforesaid at the
County aforesaid Deliver to a
particular Account of such
loss or damage signed and
verified as required by the
said Condition and did
also declare on what
behalf Offer Insurance had
been made on the said
property which was the
whole value of the subject
insured what was the
interest of the said
Plaintiffs therein in what
general manner the
building Containing the
subject insured & the
several parts thereof were

48 occupied at the time of the said Libel were the Occupants of such building & when & from the said Original Libel as far as they know or believe and also from and their own knowledge & belief the said Respondents such Certificate under the Seal of the Notary Public as is required by the said Ordinance & were ready and willing to produce their books of Account & papers and also permit Extracts or Copies to be made & to submit to an Examination under oath touching & concerning their knowledge of any thing relating to such Loss or Damage as in their Libel Mentioned and submit to such Examination the same being ordered & directed by the said Court & further say that they have duly complied with the said Ordinance

[illegible]

things Covenanted Thereunto &
observed and kept and performed
the said Articles Stipulations
& Conditions matters and
things which on their part
were to be observed & performed
According to the true and
Effect & the said Policy of
Assurance and of the said
Conditions thereto annexed and
Also the Stock & Funds of
the said Company always
from the time of the making
of the said Policy hitherto
have and still are liable
to pay to the said Plaintiff
the said damages and to
sustained by the said Loss
and Also to pay Costs of the
Action & Suit Thereby made
by the said Plaintiff and
Defend by the said Defendants
and their Office in Conformity
to the Conditions annexed to
the said Policy had long
Elapsed before the Commencement
of this Suit of and which
Vessel pursuing the said
Voyage with Captain &

to wit; on the day and
year last aforesaid at the
County aforesaid had further
time then and there granted
by the said Defendants to
pay them the said sum of
One Thousand Dollars as by
them issued is aforesaid
Yet the said Defendant not
Regarding their said promise
and undertaking so by them
made as aforesaid did not
nor would when they were so
requested as aforesaid and
any time before or since
pay the said sum of One
Thousand Dollars or any
part thereof but hath
hitherto wholly neglected
& refused so to do & still
neglect and refuse so to do
to their damage
aforesaid

And also for that
whereas the said Defendants
heretofore to wit on the
27th day of June A.D. 1837 at
the County aforesaid were
indebted to the said Plaintiffs

Jenkins

57 in the Sum of Six Thousand Dollars lawful money of the United States for so much money by the said Plaintiffs before this time paid laid out and Expended to and for the use of the said Defendants and at their special instance and request and also in the further sum of Six Thousand Dollars like lawful money by the said Defendants before this time had and received to and for the use of the said Plaintiff and also in the further sum of Six Thousand Dollars like lawful money for so much money then and there found to be due and owing from the said Defendants to the said Plaintiffs and in ~~consideration~~ Assumpsit and complaint upon an account then and there stated between them and being so indebted they the said Defendants on

Conditions Thereof Aforesaid
52 to Said in the Obligation
Year Last aforesaid &
the Condition aforesaid
Condition void. Nevertheless
provided the Said Plaintiffs
to pay them the Said
Second Sums of Money &
Interest thereon when
the Said Defendants
Should be Thereunto
Aforesaid Requested
Notwithstanding the Said
Obligations but Regarding
their Said Second
Promises and Undertakings
have not Paid the Said
Second Sums of Money or
any ~~Either~~ of them or
any part thereof to the
Said Plaintiffs Although
often Requested So to do
And the Said Defendants
have Hitherto Neglected &
and Refused to pay the
Same to the Said Plaintiffs
To the damage of the Said
Plaintiffs of Six Thousand
Dollars and therefore they

53 Kay Circuit Court Vs
County
Sheriffs Return

Came Sheriffs and made
the 2nd day of October
A.D. 1818 Writ was levied
in the Office of the Clerk of
the Circuit Court aforesaid
Five Certain Policies of Insurance
which are in the hands and
possession of the said

(Copy of Policy mentioned in Joint Control) 15

STOCK COMPANY

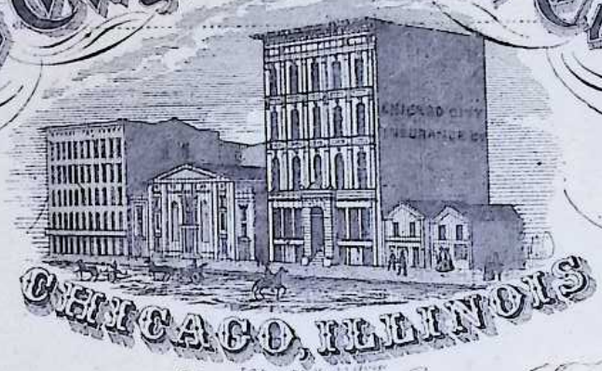
INSURANCE AGAINST FIRE
BY THIS POLICY OF INSURANCE

No. 1103

54

The

Chicago City Insurance Company



CHICAGO, ILLINOIS

In Consideration of Thirty Seven 50/100 Dollars

Cash Premium to them paid the receipt whereof is hereby acknowledged

DO INSURE

Otis Sinclair & Harris

of Chicago County of Cook State of Illinois

AGAINST LOSS OR DAMAGE BY FIRE

on the following Property as described in Application and Survey No. 1103

TO THE AMOUNT OF

Three Thousand Dollars

On their Stock of Groceries, Confectionery
in Brick Building situated on the
premises No. 113 South Water St
Chicago used for Wholesale Grocery
Store Dry Goods Store and for
purpose of Storing Packing Shipping and
Packing together Chairs Boxes and
used for Bottling Porter & Ale
Also Insurance permitted on Furniture
not to be applied

And the said Company do hereby Promise and Agree, To make good unto the said insured, according to the conditions hereto annexed, his executors, administrators and assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by FIRE to the property as above specified, from the 7th day of March one thousand eight hundred and fifty-seven (at twelve o'clock at noon;) unto the 7th day of March one thousand eight hundred and sixty-two (at twelve o'clock at noon;) the said loss or damage to be estimated according to the true and actual 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 damages 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, before, at, or after a fire. AND PROVIDED FURTHER, That in case the assured shall have any other insurance against loss by fire on the property hereby insured, not notified to this Company, and mentioned in or endorsed upon this policy, then this assurance shall be void and of no effect, and the assured hereby covenants and engages that the representations given in the application for this insurance, contains a just, full and true exposition of all facts and circumstances in regard to the condition, situation and value of the property insured, so far as the same are known to the assured, and are material to the risk or the interest of assured in the subject insured; and that if any material fact or circumstance shall not have been represented as aforesaid, and if the said assured or his assigns shall hereafter make any other insurance on the same property, or suffer the same to be encumbered sufficient to reduce the interest of the insured in the same, only equal to, or below the amount insured, and shall not give immediate notice thereof to this Company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, the policy shall cease and be of no further effect. And in case of any insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in the 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 whenever this Company shall pay any loss, the assured agrees to assign over all his right to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor at the charge and for account of the Company if requested. AND IT IS AGREED AND DECLARED to be the true intent and meaning of the parties hereto, that in case the above mentioned 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 on, or exercising therein any trade, business or vocation, denominated hazardous, extra hazardous or specially hazardous, in the memorandum of risks and rates annexed to this policy, or for the purpose of storing, keeping or vending therein, any of the articles, goods or merchandise, in the conditions thereof, denominated as aforesaid, unless herein otherwise specially provided for, or hereafter agreed to by this Company in writing, and added to or endorsed 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 to 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, subject to the conditions hereto annexed, which are to be used and resorted to, in order to establish and explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for.

In Witness Whereof, The said CHICAGO CITY INSURANCE COMPANY have caused these presents to be executed and sealed with the seal of the Company, and signed by their President and attested by their Secretary, at Chicago, Illinois.

ATTESTED.

Henry Bond Secretary.

Ernest Crawford President.

55

The Chicago City Insurance Company, Hereby consent that the interest of.....

in the within Policy be assigned to.....subject nevertheless, to all the conditions herein contained.

.....185

.....*Agent.*

FOR VALUE RECEIVED,.....hereby transfer, assign and set over unto.....and assigns, all.....right,

title and interest in this Policy of Insurance, and all benefit and advantage to be derived therefrom.

Dated at.....this.....day of.....A. D. 185

The Chicago CityInsurance Company, Hereby consent that the interest of.....

in the within Policy be assigned to.....subject nevertheless, to all the conditions herein contained.

.....185

.....*Agent.*

FOR VALUE RECEIVED,.....hereby transfer, assign and set over unto.....and assigns, all.....right,

title and interest in this Policy of Insurance, and all benefit and advantage to be derived therefrom.

Dated at.....this.....day of.....A. D. 185

CLASS OF HAZARDS AND CONDITIONS OF INSURANCE

REFERRED TO ON THE FIRST PAGE OF THIS POLICY.

CLASS OF HAZARDS:

NOT HAZARDOUS.

Goods not hazardous are to be insured at the rate of the buildings in which they are contained, and are such as are usually kept in Dry Goods Stores, including Coffee, Flour, Linen, Indigo, Potash, Rice, Spices, Sugars, Teas, Threshed Grain, and other articles not combustible.

HAZARDOUS.

The following trades and occupations, Goods, Wares, and Merchandise, are denominated hazardous, and are to be charged 10 cents per $100 in addition to the rate of the building in which they are contained, viz: Basket Sellers, Cotton in bales, Coppersmiths, China, Earthen, or Glass Ware, or plate Glass in packages, boxes, or casks, Groceries, with any hazardous articles, Hay pressed in bundles, Hardware, Household Furniture, Looking Glasses in packages or boxes, Milliner's Stock, Oil, Paper in Reams, Paper Hangings, Pitch, Rags, Sail-makers, Saltpetre, Spirituous Liquors, Sulphur, Tallow, Tar, Turpentine, Window Glass in boxes, Wooden Ware Sellers, and Wood.

EXTRA HAZARDOUS.

The following trades and occupations, Goods, Wares and Merchandise, are denominated extra hazardous, and will be charged 25 cents and upwards per $100, in addition to the rate of the building in which they are contained, viz: Alcohol, Apothecaries, Aquafortis, Booksellers' Stock, Brass Founders, Brush Makers, Cabinet Makers' Stock, Carvers, China or Earthen Ware, or Looking Glasses unpacked, and buildings in which the same is packed or unpacked, Chocolate Makers, Colormen's Stock, Comb Makers, Confectioners, or their Stock, Druggists, Ether, Founders, Flax, Grate Makers, Hat Finishers, Hats of Chip or Grass, Hemp, Jewellers' Stock, Lamp Manufacturers, Lime unslacked, Mathematical, Musical, or Optical Instrument Sellers, Perfumers' Stock, Morocco Manufacturers, Pictures, Platers and Plated Ware Manufactories, Prints, Printers of Newspapers, Porter Houses, Painters' Shops, Rag Stores, Ship Chandlers, Silversmith or Stationers' Stock, Soap Makers, Spirits of Turpentine, Stove Manufactories, Taverns, Tin or Sheet Iron Workers, Tobacco Manufactories, Toy Shop-keepers' Stock, Turners, Upholstery Manufacturers Varnish, Victualing Shops, Watchmakers' Stock and Tools, and Window or Plate Glass unpacked.

SPECIALLY HAZARDOUS.

Memorandums of Special Hazards, upon which special rates of premium will be charged viz: Bakers, Bark Mills, Basket Bleaching, Brewers, Brimstone Works, Book Binders, Brass Foundries, Blacksmiths, Boat Builders, Copperplate Printers, Cabinet Makers, Carpenters, Joiners, Coopers, Chair or Coach Makers' Work Shops, Chemists, Cotton Mills, Dyery, Forgers, Fences, Flax Mills, Frame Makers, Fulling Mills, Grist Mills, Gun Makers or Smiths, Hat Manufactories, Houses building or repairing, Ink or Ivory Black, or Lamp Black Manufactories, Lumber or Mahogany Yards, Malt Houses, Metal and other Mills of all kinds, Musical Instrument Makers, Oil Makers, Oil Boiling Houses, Pump and Block Makers' Shops, Paper Mills, Piazzas and Privies of Wood, Printers of Books and Jobbing, Rope Makers, Saw or Snuff Mills, Ship Builders' Stock in the Yard, Ships or other Vessels in port, or their cargos, or when building or repairing, Steam Engines or Boats, Straw or Palm Leaf Bleaching, Sugar Refiners, Stables, Tallow Melters or Chandlers, Tanners, Timber Yards, Type Founders, Varnish Makers, Woolen Mills, and generally all Manufacturing establishments, and all trades requiring the use of Fire Heat not before enumerated. *Distilleries, Museums, Friction Match Manufactories or Matches, Gun Powder or Powder Mills, Oakum Factories, Sash and Blind Factories, Planing Mills, Tar-boiling Houses, Turpentine Manufactories, Theatres and other places of Public Exhibition, and Panoramas on exhibition or otherwise,* are not insurable.

CHICAGO CITY INSURANCE COMPANY.

Office, Room No. 1, Masonic Temple, Dearborn Street, Chicago, Ill.

OFFICERS.

EDMUND CANFIELD, President, Wm. S. BATES, Secretary, HENRY CHAPMAN, Treasurer.

CONDITIONS OF INSURANCE.

I Application for insurance on property must be in writing, and specify the construction and materials of the buildings to be insured, or containing the property to be insured; the interest of applicants therein; by whom occupied; whether as a private dwelling, or how otherwise; its situation with respect to contiguous buildings, and their construction or materials; whether any manufactory is carried on within or about them, and in case of goods or merchandise, a particular description of their kind, denomination and class; and in case of household goods, wearing apparel, liquors, machinery, fixed or moveable, or fixtures of any kind, a specification must be made of each.

II. Jewels, Plate, Medals, Paintings, Statues 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.

III. Property held in trust, or on commission, must be insured as such, otherwise the policy will not cover such property. GOODS ON STORAGE MUST BE SEPARATELY AND SPECIFICALLY INSURED.

IV. A false description by the assured, of a building, or of its contents, or the omission to make known any fact material to the risk, or in a valued policy an over valuation, shall render absolutely void a policy issued upon such description or valuation. But the office will be responsible for the accuracy of the surveys made by its Agents. But after an insurance is effected, either by the policy or by the renewal thereof, the risk be increased by any means within the control of the assured, or if such buildings or premises shall be, with the assent of the assured, 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. Or during this insurance, any subsequent insurance should be made upon the property hereby insured, which, with the sums already insured, should, in the opinion of the said company, amount to an over-insurance, 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, after notice given to the assured, or his representative, of their intention to do so in which case the company will refund the premium for the unexpired term.

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

VI. 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 representation 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.

VII. 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 warranted on the part of the assured. But the company shall, in case of loss on buildings, be liable for no more than two-thirds the actual cash value of such building at the time of such loss.

VIII. The company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or for any damages caused by fire originating from depositing ashes or embers in wooden vessels, or in consequence of neglect or deviation from the laws or regulations of police, made to prevent accidents from fire, in places where laws and regulations on this subject exist.

IX. 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 from damage by fire resulting from such explosion, unless otherwise expressly provided. The keeping of gunpowder, for sale or on storage, upon or in the premises insured, or the lighting the same by camphene or spirit gas, without written permission in the policy, shall render it void.

X. Notice of all previous insurances, upon any property insured by the Company, shall be given to them and endorsed on this policy, or otherwise acknowledged by this Company in writing, at or before the time of their making insurance thereon, otherwise the policy subscribed by this Company shall be of no effect. And in case of subsequent insurance on property insured by this Company, notice thereof must be given to them with all due diligence, to the end that such subsequent insurance may be endorsed on the policy subscribed by this Company, or otherwise acknowledged in writing; in default whereof, such policy shall thenceforth cease and be of no effect. And in all cases of insurance, this Company shall be liable for such rateable proportion of the loss or damage happening to the SUBJECT insured, as the amount by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different policies. And in all cases of re-insurance, this Company shall be liable only for such rateable proportion of the loss or damage happening to the subject insured, and which the party effecting such re-insurance shall become liable to pay, as the amount of such re-insurance by this Company shall bear to the whole amount insured thereon, exclusive of such re-insurance.

XI. Policies of insurance subscribed by this Company, shall not be assignable without the consent of the Company, expressed by endorsement 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 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.

XII. In case of fire, or loss or damage thereby, or exposure 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 fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect.

XIII. All persons insured by this Company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the Company; and within thirty days thereafter, deliver in a particular account of such loss or damage, signed by their own hands, and verified by their oath or affirmation, and also, if required by their books of account and other proper vouchers, and permit extracts or copies to be made. 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, and if goods held in trust, or commission or storage, the names of the respective owners, and their respective interest therein; in what general manner, (as the trade, manufactory, merchandise or otherwise) the building insured or containing the subject insured, and 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 or believe; and also in case of personal property for which claim is made, was either destroyed or damaged in consequence of fire, and to their knowledge or belief was not purloined or otherwise disposed of either before or during such fire. They shall also procure a certificate under the hand of a magistrate or notary public (most contiguous to the place of the fire, and not concerned in the loss as creditor or otherwise, or related to the insured or sufferers,) that they have made due enquiry into the cause and origin of the fire, and also as to the value of the property destroyed, and are acquainted with the character and circumstances of the person insured, and do know or verily believe 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 shall also, if required, submit to an examination under oath, by the agent or attorney of the Company, and answer all questions touching his, her or their knowledge of anything relating to such loss or damage, or to their claims therefor, 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. Where merchandise and 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 kinds, and shall cause a list or inventory to be made, naming the cost and quality of each kind. The damage shall then be ascertained by the examination and appraisal of each article, by disinterested appraisers, mutually agreed upon, one half the expense to be paid by the insurers. A copy of the written portion of the policy to be given in the affidavit of the claimant. In every case of loss or damage, an appraisement of the same shall be made by two or three competent persons who are not in any way interested in the same, nor in any degree connected with the insured—to be mutually appointed by the insured and the company or their agent. The report of such appraisement shall be in writing under oath, and must form part of the preliminary proofs aforesaid.

XIV. In case of any loss on 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 value, or to pay to the assured the actual cash value of the property lost or damaged at the time when such fire shall occur, and to rebuild or repair the buildings within a reasonable time, giving notice of their intention to do so within thirty days after having received the preliminary proofs of loss required by the tenth article of these conditions.

XV. Payment of losses shall be made within sixty days after notice, proof and adjustment thereof, and in case differences 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.

CHICAGO CITY

Fire Insurance Company,

CHICAGO, ILLINOIS.

Premium, $

Amount Insured, $

Policy and Survey, $

Edward Biles, Printer, 61 Dearborn street, Chicago.

CLASS OF HAZARDS

AND

CONDITIONS OF INSURANCE

REFERRED TO ON THE [illegible] PART OF THIS POLICY.

CLASS OF HAZARDS:

NOT HAZARDOUS.

Goods not hazardous are to be insured at the rate of the buildings in which they are contained, and are such as are usually kept in Dry Goods Stores, including Coffee, Flour, Linen, Indigo, [illegible] Rice, Spices, Sugars, Teas, Threshed Grain, and other articles not combustible.

HAZARDOUS.

The following trades and occupations, Goods, Wares and Merchandise, are denominated hazardous, and are to be charged 10 cents per $100 in addition to the rate of the building in which they are contained, viz: [illegible]

EXTRA HAZARDOUS.

The following trades and occupations, Goods, Wares and Merchandise, are denominated extra hazardous and will be charged 25 cents and upwards per $100, in addition to the rate of the building in which they are contained, viz: Alcohol, Apothecaries, [illegible]

Fire Insurance Company,

CHICAGO, ILLINOIS.

Memorandum of Special Hazards, upon which special rates of premium will be charged, viz: Bakers, Bark Mills, [illegible] Book Binders, Brass Founders, [illegible] Carpenters, Joiners, Coopers, [illegible] Chair or Coach Makers' Work Shops, Chemists, Cotton Mills, Dyery, Forgers, Fences, Flax Mills, [illegible] Gun Makers or Smiths, Hat Manufactories, Houses building or repairing, Ink or Ivory Black, or Lamp Black Manufactories, [illegible] Metal and other Mills of all kinds, Musical Instrument Makers, Oil Makers, Oil Boiling Houses, Pump and Block Makers' Sho[illegible] Wood, Printers of Books and Jobbing, Rope Makers, Saw or Snuff Mills, Ship Builders' Stock in the Yard, Ships or other V[illegible] building or repairing, Steam Engines or Boats, Straw or Palm Leaf Bleaching, Sugar Refiners, Stables, Tallow Melters or C[illegible] Founders, Varnish Makers, Woolen Mills, and generally all Manufacturing establishments, and all trades requiring the use of fi[illegible] stilleries, Museums, Friction Match Manufactories or Matches, Gun Powder or Powder Mills, Oakum Factories, Sash and Blind Factori[illegible], Turpentine Manufactories, Theatres and other places of Public Exhibition, and Panoramas on exhibition or otherwise, are not insurab[illegible]

CHICAGO CITY INSURANCE COMPANY.

Office, Room No. 1, Masonic Temple, Dearborn Street, Chicago, Ill.

OFFICERS.

EDMUND CANFIELD, President, Wm. S. BATES, Secretary, HENRY CHAPMAN, Treasurer.

CONDITIONS OF INSURANCE.

I. Application for insurance on property must be in writing, and specify the construction and materials of the buildings to be insured, or containing the property to be insured; the interest of applicants therein; by whom occupied, whether as a private dwelling, or how otherwise; its situation with respect to contiguous buildings, and their construction or materials; whether any manufactory is carried on within or about them, and in case of goods or merchandise, a particular description of their kind, denomination and class; and in case of household goods, wearing apparel, liquors, machinery, fixed or moveable, or fixtures of any kind, a specification must be made of each.

II. Jewels, Plate, Medals, Paintings, Statues 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.

III. Property held in trust, or on commission, must be insured as such, otherwise the policy will not cover such property. GOODS ON STORAGE MUST BE SEPARATELY AND SPECIFICALLY INSURED.

IV. A false description by the assured, of a building, or of its contents, or the omission to make known any fact material to the risk, or in a valued policy an over valuation, shall render absolutely void a policy issued upon such description or valuation. But the office will be responsible for the accuracy of the surveys made by its Agents. But after an insurance is effected, either by the policy or by the renewal thereof, the risk be increased by any means within the control of the assured, or if such buildings or premises shall be, with the assent of the assured, 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. Or during this insurance, any subsequent insurance should be made upon the property hereby insured, which, with the sums already insured, should, in the opinion of the said company, amount to an over-insurance, 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, after notice given to the assured, or his representative, of their intention to do so in which case the company will refund the premium for the unexpired term.

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

VI. 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 representation 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.

VII. 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 warranted on the part of the assured. But the company shall, in case of loss on buildings, be liable for no more than two-thirds the actual cash value of such building at the time of such loss.

VIII. The company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or for any damages caused by fire originating from depositing ashes or embers in wooden vessels, or in consequence of neglect or deviation from the laws or regulations of police, made to prevent accidents from fire, in places where laws and regulations on this subject exist.

IX. 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 from damage by fire resulting from such explosion, unless otherwise expressly provided. The keeping of gunpowder, for sale or on storage, upon or in the premises insured, or the lighting the same by camphene or spirit gas, without written permission in the policy, shall render it void.

X. Notice of all previous insurances, upon any property insured by the Company, shall be given to them and endorsed on this policy, or otherwise acknowledged by this Company in writing, at or before the time of their making insurance thereon, otherwise the policy subscribed by this Company shall be of no effect. And in case of subsequent insurance on property insured by this Company, notice thereof must be given to them with all due diligence, to the end that such subsequent insurance may be endorsed on the policy subscribed by this Company, or otherwise acknowledged in writing; in default whereof, such policy shall thenceforth cease and be of no effect. And in all cases of insurance, this Company shall be liable for such rateable proportion of the loss or damage happening to the subject insured, as the [illegible]

[illegible] happening to the subject insured, and which the party effecting such re-insurance shall become liable to pay, as the amount of such re-insurance by this Company shall bear to the whole amount insured thereon, exclusive of [illegible]

XI. Policies of insurance subscribed by this Company [illegible] without the consent of [illegible] In case of assignment [illegible] cease. And in case of [illegible]

XII. [illegible]

XIII. [illegible]

XIV. [illegible]

XV. [illegible]

CLASS OF HAZARDS AND CONDITIONS OF INSURANCE

REFERRED TO ON THE FIRST PAGE OF THIS POLICY.

CLASS OF HAZARDS:

NOT HAZARDOUS.

Goods not hazardous are to be insured at the rate of the buildings in which they are contained, and are such as are usually kept in Dry Goods Stores, including Coffee, Flour, Linen, Indigo, Potash, Rice, Spices, Sugars, Teas, Threshed Grain, and other articles not combustible.

HAZARDOUS.

The following trades and occupations, Goods, Wares, and Merchandise, are denominated hazardous, and are to be charged 10 cents per $100 in addition to the rate of the building in which they are contained, viz: Basket Sellers, Cotton in bales, Coppersmiths, China, Earthen, or Glass Ware, or plate Glass in packages, boxes, or casks, Groceries, with any hazardous articles, Hay pressed in bundles, Hardware, Household Furniture, Looking Glasses in packages or boxes, Milliner's Stock, Oil, Paper in Reams, Paper Hangings, Pitch, Rags, Sail-makers, Saltpetre, Spirituous Liquors, Sulphur, Tallow, Tar, Turpentine, Window Glass in boxes, Wooden Ware Sellers, and Wood.

EXTRA HAZARDOUS.

The following trades and occupations, Goods, Wares and Merchandise, are denominated extra hazardous, and will be charged 25 cents and upwards per $100, in addition to the rate of the building in which they are contained, viz: Alcohol, Apothecaries, Aquafortis, Booksellers' Stock, Brass Founders, Brush Makers, Cabinet Makers' Stock, Carvers, China or Earthen Ware, or Looking Glasses unpacked, and buildings in which the same is packed or unpacked, Chocolate Makers, Colormen's Stock, Comb Makers, Confectioners, or their Stock, Druggists, Ether, Founders, Flax, Grate Makers, Hat Finishers, Hats of Chip or Grass, Hemp, Jewellers' Stock, Lamp Manufacturers, Lime unslacked, Mathematical, Musical, or Optical Instrument Sellers, Perfumers' Stock, Morocco Manufacturers, Pictures, Platers and Plated Ware Manufactories, Prints, Printers of Newspapers, Porter Houses, Painters' Shops, Rag Stores, Ship Chandlers, Silversmith or Stationers' Stock, Soap Makers, Spirits of Turpentine, Stove Manufactories, Taverns, Tin or Sheet Iron Workers, Tobacco Manufactories, Toy Shop-keepers' Stock, Turners, Upholstery Manufacturers Varnish, Victualing Shops, Watchmakers' Stock and Tools, and Window or Plate Glass unpacked.

SPECIALLY HAZARDOUS.

Memorandums of Special Hazards, upon which special rates of premium will be charged viz: Bakers, Bark Mills, Basket Bleaching, Brewers, Brimstone Works, Book Binders, Brass Foundries, Blacksmiths, Boat Builders, Copperplate Printers, Cabinet Makers, Carpenters, Joiners, Coopers, Chair or Coach Makers' Work Shops, Chemists, Cotton Mills, Dyery, Forgers, Fences, Flax Mills, Frame Makers, Fulling Mills, Grist Mills, Gun Makers or Smiths, Hat Manufactories, Houses building or repairing, Ink or Ivory Black, or Lamp Black Manufactories, Lumber or Mahogany Yards, Malt Houses, Metal and other Mills of all kinds, Musical Instrument Makers, Oil Makers, Oil Boiling Houses, Pump and Block Makers' Shops, Paper Mills, Piazzas and Privies of Wood, Printers of Books and Jobbing, Rope Makers, Saw or Snuff Mills, Ship Builders' Stock in the Yard, Ships or other Vessels in port, or their cargos, or when building or repairing, Steam Engines or Boats, Straw or Palm Leaf Bleaching, Sugar Refiners, Stables, Tallow Melters or Chandlers, Tanners, Timber Yards, Type Founders, Varnish Makers, Woolen Mills, and generally all Manufacturing establishments, and all trades requiring the use of Fire Heat not before enumerated. *Distilleries, Museums, Friction Match Manufactories or Matches, Gun Powder or Powder Mills, Oakum Factories, Sash and Blind Factories, Planing Mills, Tar-boiling Houses, Turpentine Manufactories, Theatres and other places of Public Exhibition, and Panoramas on exhibition or otherwise,* are not insurable.

CHICAGO CITY INSURANCE COMPANY.

Office, Room No. 1, Masonic Temple, Dearborn Street, Chicago, Ill.

OFFICERS.

EDMUND CANFIELD, President, Wm. S. BATES, Secretary, HENRY CHAPMAN, Treasurer.

CONDITIONS OF INSURANCE.

I Application for insurance on property must be in writing, and specify the construction and materials of the buildings to be insured, or containing the property to be insured; the interest of applicants therein; by whom occupied; whether as a private dwelling, or how otherwise; its situation with respect to contiguous buildings, and their construction or materials; whether any manufactory is carried on within or about them, and in case of goods or merchandise, a particular description of their kind, denomination and class; and in case of household goods, wearing apparel, liquors, machinery, fixed or moveable, or fixtures of any kind, a specification must be made of each.

II. Jewels, Plate, Medals, Paintings, Statues 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.

III. Property held in trust, or on commission, must be insured as such, otherwise the policy will not cover such property. GOODS ON STORAGE MUST BE SEPARATELY AND SPECIFICALLY INSURED.

IV. A false description by the assured, of a building, or of its contents, or the omission to make known any fact material to the risk, or in a valued policy an over valuation, shall render absolutely void a policy issued upon such description or valuation. But the office will be responsible for the accuracy of the surveys made by its Agents. But after an insurance is effected, either by the policy or by the renewal thereof, the risk be increased by any means within the control of the assured, or if such buildings or premises shall be, with the assent of the assured, 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. Or during this insurance, any subsequent insurance should be made upon the property hereby insured, which, with the sums already insured, should, in the opinion of the said company, amount to an over-insurance, 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, after notice given to the assured, or his representative, of their intention to do so in which case the company will refund the premium for the unexpired term.

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

VI. 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 representation 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.

VII. 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 warranted on the part of the assured. But the company shall, in case of loss on buildings, be liable for no more than two-thirds the actual cash value of such building at the time of such loss.

VIII. The company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or for any damages caused by fire originating from depositing ashes or embers in wooden vessels, or in consequence of neglect or deviation from the laws or regulations of police, made to prevent accidents from fire, in places where laws and regulations on this subject exist.

IX. 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 from damage by fire resulting from such explosion, unless otherwise expressly provided. The keeping of gunpowder, for sale or on storage, upon or in the premises insured, or the lighting the same by camphene or spirit gas, without written permission in the policy, shall render it void.

X. Notice of all previous insurances, upon any property insured by the Company, shall be given to them and endorsed on this policy, or otherwise acknowledged by this Company in writing, at or before the time of their making insurance thereon, otherwise the policy subscribed by this Company shall be of no effect. And in case of subsequent insurance on property insured by this Company, notice thereof must be given to them with all due diligence, to the end that such subsequent insurance may be endorsed on the policy subscribed by this Company, or otherwise acknowledged in writing; in default whereof, such policy shall thenceforth cease and be of no effect. And in all cases of insurance, this Company shall be liable for such rateable proportion of the loss or damage happening to the SUBJECT insured, as the amount by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different policies. And in all cases of re-insurance, this Company shall be liable only for such rateable proportion of the loss or damage happening to the subject insured, and which the party effecting such re-insurance shall become liable to pay, as the amount of such re-insurance by this Company shall bear to the whole amount insured thereon, exclusive of such re-insurance.

XI. Policies of insurance described by this Company shall not be assignable without the consent of the company, expressed by endorsement 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 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.

XII. In case of fire, or loss or damage thereby, or exposure 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 fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect.

XIII. All persons insured by this Company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the Company; and within thirty days thereafter, deliver in a particular account of such loss or damage, signed by their own hands, and verified by their oath or affirmation, and also, if required by their books of account and other proper vouchers, and permit extracts or copies to be made. 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, and if goods held in trust, or commission or storage, the names of the respective owners, and their respective interest therein; in what general manner, (as the trade, manufactory, merchandise or otherwise) the building insured or containing the subject insured, and 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 or believe; and also in case of personal property for which claim is made, was either destroyed or damaged in consequence of fire, and to their knowledge or belief was not purloined or otherwise disposed of either before or during such fire. They shall also procure a certificate under the hand of a magistrate or notary public (most contiguous to the place of the fire, and not concerned in the loss as creditor or otherwise, or related to the insured or sufferers,) that they have made due enquiry into the cause and origin of the fire, and also as to the value of the property destroyed, and are acquainted with the character and circumstances of the person insured, and do know or verily believe 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 shall also, if required, submit to an examination under oath, by the agent or attorney of the Company, and answer all questions touching his, her or their knowledge of anything relating to such loss or damage, or to their claims therefor, 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. Where merchandise and 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 kinds, and shall cause a list or inventory to be made, naming the cost and quality of each kind. The damage shall then be ascertained by the examination and appraisal of each article, by disinterested appraisers, mutually agreed upon, one half the expense to be paid by the insurers. A copy of the written portion of the policy to be given in the affidavit of the claimant. In every case of loss or damage, an appraisement of the same shall be made by two or three competent persons who are not in any way interested in the same, nor in any degree connected with the insured—to be mutually appointed by the insured and the company or their agent. The report of such appraisement shall be in writing under oath, and must form part of the preliminary proofs aforesaid.

XIV. In case of any loss on 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 value, or to pay to the assured the actual cash value of the property lost or damaged at the time when such fire shall occur, and to rebuild or repair the buildings within a reasonable time giving notice of their intention to do so within thirty days after having received the preliminary proofs of loss required by the tenth article of these conditions.

XV. Payment of losses shall be made within sixty days after notice, proof and adjustment thereof, and in case differences 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.

59

The Chicago City Insurance Company, Hereby consent that the interest of.....

in the within Policy be assigned to.....subject nevertheless, to all the conditions herein contained.

.....185

.....*Agent.*

FOR VALUE RECEIVED,.....hereby transfer, assign and set over unto.....and assigns, all.....right,

title and interest in this Policy of Insurance, and all benefit and advantage to be derived therefrom.

Dated at.....this.....day of.....A. D. 185

The Chicago CityInsurance Company; Hereby consent that the interest of.....

in the within Policy be assigned to.....subject nevertheless, to all the conditions herein contained.

.....185

.....*Agent.*

FOR VALUE RECEIVED,.....hereby transfer, assign and set over unto.....and assigns, all.....right,

title and interest in this Policy of Insurance, and all benefit and advantage to be derived therefrom.

Dated at.....this.....day of.....A. D. 185

Copy of Policy mentioned in Lease Court of [illegible]

STOCK COMPANY

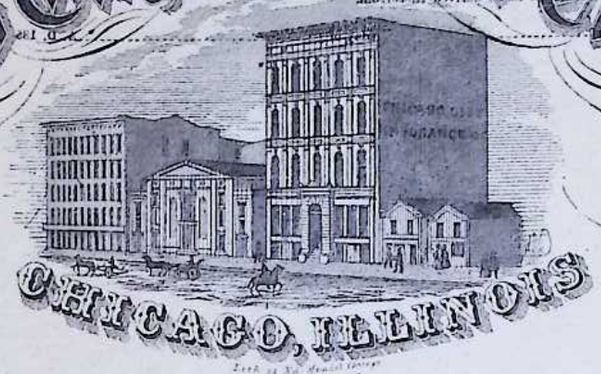
No. 1351

INSURANCE AGAINST FIRE

BY THIS POLICY OF INSURANCE

The

Chicago City Insurance Company



CHICAGO, ILLINOIS

In Consideration of Nine Dollars

Cash Premium to them paid the receipt whereof is hereby acknowledged

DO INSURE

Otis Sinclair & Co

of Chicago County of Cook State of Illinois

AGAINST LOSS OR DAMAGE BY FIRE

on the following Property as described in Application and Survey No 1259

TO THE AMOUNT OF

Two Thousand Dollars

Three Hundred

On their Stock of Wholesale

Groceries Spices and Liquors

Contained in the Brick Building

Situated on South State Street

known as No 113 in the City of

Chicago State of Illinois

And the said Company do hereby Promise and Agree, To make good unto the said insured, according to the conditions hereto annexed, such loss or damage, not exceeding in amount the sum insured, as shall happen by FIRE to the property as above specified, from the 1st day of June one thousand eight hundred and fifty- (at twelve o'clock at noon;) unto the 1st day of June one thousand eight hundred and fifty- (at twelve o'clock at noon;) the said loss or damage to be estimated according to the true and actual value of the propery 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 damages 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, before, at, or after a fire. AND PROVIDED FURTHER, That in case the assured shall have any other insurance against loss by fire on the property hereby insured, not notified to this Company, and mentioned in or endorsed upon this polic, then this assurance shall be void and of no effect, and the assured hereby covenants and engages that the representations given in the application for this insurance, contains a just, full and true expositio of all facts and circumstances in regard to the condition, situation and value of the property insured, so far as the same are known to the assured, and are material to the risk or the interest of assured in the subject insured; and that if any material fact or circumstance shall not have been represented as aforesaid, and if the said assured or his assigns shall hereafter make any other insurance o the same property, or suffer the same to be encumbered sufficient to reduce the interest of the insured in the same, only e qual to, or below the amount insured, and shall not give immediate notice thereof to this Company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, the policy shall cease and be of no further effect. And in case of any insurance upon th property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in the 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 whenever this Company shall pay any loss, the assured agrees to assign over all his right to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor at the charge and for account of the Company if requested. 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 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 on, or exercising therein any trade, business or vocation, denominad hazardous, extra hazardous or specially hazardous, in the memorandum of risks and rates annexed to this policy, or for the purpose of storing, keeping or vending therein, any of the articles, goo s or merchandise, in the conditions thereof, denominated as aforesaid, unless herein otherwise specially provided for, or hereafter agreed to by this Company in writing, and added to or endorsed upon its 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 to 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, subject to the conditions hereto annexed, which are to be used and resorted to, in order to establish and explain the rights and obligations of the parties here, in all cases not herein otherwise specially provided for.

In Witness Whereof, The said CHICAGO CITY INSURANCE COMPANY have caused these presents to be executed and sealed with the seal of the Company, and signed by their President and attested by their Secretary, at Chicago, Illinois.

ATTESTED.

Henry Gault Secretary.

Edmund Carter President.

Copy Common Counts

1862 The Chicago City Insurance Company

In Debt Sinclair & Hall

Also due for use of Southwark Steam &c

To money paid laid out & Expended $ Cts

" money had & received $ Cts

" Note & Due on account Stated $ Cts

Cook County ss Filed on the 21st day of October A.D. 1857 Then was filed in the Office of the Clerk of the Circuit Court aforesaid a certain Account which is in the words and figures following to wit:

In the Circuit Court of Cook County of the October Term A.D. 1857

The Chicago City Insurance Company

vs

Isaac H. Hall

Horatio G. Sinclair &

Benja. Hall

and the said Defendants by
Brooks & Spencer their Attorneys
come and defend the
wrong and injury when &c
and say that the said Count
& the said Declaration &
each Sufficient for the said
Plaintiff to have & maintain
their aforesaid Action thereof
against the said Defendants
and that the said Defendants
are not bound to answer the
same

And the said Defendants
assign the following Causes of
Demurrer viz: That the said
Count sets forth Conditions Clause
as part of Contract of
Insurance which Condition
as set forth provides that
any Change of Title in the
property insured or any
Transfer of any Condition
thereof shall render
void such Insurance and
at the same time the said
Plaintiff in said Count
admit and now Transfer
by Indorsement one of said

64 Plaintiffs to the other
Plaintiffs of his (Similar)
Conditional Interest in the said
Stock in said Court alleged to
have been issued by said
Defendants methods
Containing any ~~Consent~~
Agreement that the said
Defendants Consented to
said Transfer and Expressed
such Consent by Endorsement
on said Policy and that
the said Defendants are
ready to verify Whereupon
by reason of the Jurisdiction
of said Court in this behalf
the said Defendants pray
Judgement as to said
Court and that the said
Plaintiffs be barred from
bringing or maintaining
their aforesaid Action
thereof against them &c
as to the Second Count of
said Declaration the said
Defendant says the same is
insufficient in law that it
before ought to the said Court
for the Condition of the Contract

65 of Insurance which the said
Court Contains Conclusions
Eleven and yet Contains an
Agreement of sale by Stockton
to Otis and Sloan & this
Incidental Matter is the
Stock issued nothing appears
that the Consent of the
Defendants was obtained
to such sale and such
Consent Endorsed on said
Policy Therefore by reason
of the premises & said
Second Count the said
Defendants pray Judgment &c
Mcmeans & Spencer
Defts Attorneys

Cook County Circuit Court
of the October Term A.D. 1857

The Ottawa City
Insurance Company
ats
Jno. H. Otis
Orrin G. Stockton
Geo. P. Sloan

And the said Defendants
by Mcmeans & Spencer their

66 Thomas Crane and Clifford
the County and injury when
&c And say as to the
third and subsequent Counts
of said Declaration that
they did not undertake &
promise in manner and
form as the said plaintiff
have thereof Complained
above against them And of this
they put themselves upon the
Country &c

Weaver & Spencer
Defts Attys

And afterwards to wit on
the 21st day of October AD
1857 there was filed in the
office of the Clerk of the Circuit
Court aforesaid a certain Appeal bond
which is in the words and
figures following to wit

In the Circuit Court
Cook County
AD 1857

The Chicago Mutual Insurance
Company
vs
Joel H Dix

67

Thomas S Sinclair }
Jas. S Davis }

State of Illinois }
County of Cook } ss.

William S Bates being duly
sworn says that he is the
Secretary of said Company
that he has fully heard
stated the facts contained in
the said Company's defense
to the action Entitled said
& that Attorneys Wheeler &
Spencer & is informed by them
& verily believes that the said
defendants have a good
& substantial defense upon
the merits to the action said
Subscribed & Sworn }
before me this 21st }
day of October A.D. }
1857 }

William S Bates

Sec'y

And afterwards to wit: on the
68 2nd day of January A.D. 1858 it
being one of the days of the
November Term of said Court
for the year A.D. 1857 the following
among other proceedings was
had and entered of record
therein to wit:

Jesse H. Ord Health &
Sheafer & Jesse Lewis
vs. Steam Propeller
Illinois Steam Packet
Co. Southworth & Avery
Farrington &
Chicago Dock & Canal
Company of
Chicago

This day came the said parties
by their attorneys and by their
agreement made here in open
Court the said Defendants
Demurrer to said Plaintiffs
Declaration be and it hereby is
withdrawn & leave granted the
said Defendants to file
the same instanter which
is accordingly done in
the words & figures following to wit

69 And afterwards to wit on the
2 8th day of January A.D.
1858 it being one of the days
of the [illegible] Term of
Said Court at which Court
for said County the Said
Cause stood regularly
Continued stood to the
following among other
proceedings was had and
Entered of Record in said
Court to wit

Present The Hon
Horatio G Sinclair
Judge &c Presiding
In the case of
Thomas E Smethurst
Henry Hewington &
vs
Phoenix Ins Co
Company of Phoenix

Now on this came the said
Plaintiffs by their Attorneys and
withdraw the Common Counts
in their declaration herein
and demurr to plaintiffs

Error to Cook County Court of
68 Ill. Sinclair et al.
vs.
Chicago City &c.

Appeal to Supreme Ct.
State of Illinois

Complete Record &
Files & Proceedings

Fees for Same
$16.50

6 Bentley &
Conard & Kane
Atty's for Appellants

306

Joel H. Dix
vs
Chicago City Railroad
Company &c. Chicago

Fd. 2 April 29 1859
S. Leland
Clk.

Declaration having been
70 submitted to the Court and
taken under advisement and
the Court having heard
Counsel in said Cause and
being well advised in
the premises Doctrine Said
Cause in favor of Plaintiffs
to Said Declaration and
the Court therefore finds
for the Defendant on its
Counter

Therefore it is
considered that Said
Defendant do have and
recover of said Plaintiffs its
Costs and Charges by it
in this behalf Expended and
have Execution therefor

State of Illinois,
COUNTY OF COOK. } s. s.

I, **WILLIAM L. CHURCH,** *Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of* the Record entered in the Judge
in a certain cause lately pending in said Court on the Common Law *side thereof, wherein* Lord & Dix
Assts to G. Smith's Use George W Lane who sue for Plaintiffs and
the City of Chicago Insurance Company defendant

IN WITNESS WHEREOF, *I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this* Sixteen *day of* August *A. D. 18*58

Wm L Church
Clerk.

12737

Errors assigned by Plaintiffs

The Court erred in sustaining
the Demurrer of the defendant,

C. Beutler
Atty for Plffs.

In State of Illinois
ss

In Supreme Court of the State
of Illinois
dock 11 Digest

Chicago City "
Insurance Company "
and now comes the defen-
dants in error and say that
there is no error in the
said records and proceedings
as alleged, and that upon
that said judgement be affirmed
with costs &c

Mouron & Spencer
Shumway Waite & Dorne
Attys for defendants
Attys in error

Wm. O. Bryant & Co., Printers, 41 Nassau Street.

Supreme Court,

Error to the Circuit Court of Cook County

STATE OF ILLINOIS.

DIX, SINCLAIR and HARRIS,
Plaintiffs in Error,
v.
THE CHICAGO CITY INSURANCE COMPANY.

Plaintiffs' Brief.

Cyrus Bentley, Plaintiffs Atty

The same Plaintiffs,
v.
THE MERCANTILE INSURANCE COMPANY.

CHARLES TRACY,
Of Counsel.

Statement.

These actions are brought upon policies of insurance against loss or damage by fire. The plaintiffs being copartners and having a stock of goods at Chicago, the defendants received from them the premiums, and issued policies to the plaintiffs for one year from 27th September, 1856. In February, 1857, the plaintiff Sinclair sold out his interest in the goods to his copartners Dix and Harris. In March, 1857, the goods were destroyed by fire.

The defendants, by demurrer to the declaration, seek to defend on the ground of an alleged forfeiture of the policies by reason of such sale, under a clause in the policies in these words: "In case of any 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."

POINTS.

II.

Independent of the clause in question, the plaintiffs' right of action, in their three names, would be plain.

(1.) The contract having been made with three copartners, any action brought upon it must be in the names of them all, notwithstanding a transfer of the property or the policies. Nothing but the death of a partner could take a case out of this general rule of the common law.

3 *Hill*, 88, *Jessels* v. *The Williamsburgh Insurance Co.*

(2.) The instances in the books where the right of an assignee to one in his own name has been sanctioned, are special and exceptional, viz. :

———Marine insurance cases, on the principle that the contract is maritime, and does not fall within the common law.

1 *Phillips on Insurance*, § 76, 3d ed., p. 57.

———Actions brought in States like New York and Ohio, since they have adopted the modern Code of Procedure, requiring the plaintiff in interest to be plaintiff of record in allcases; and

Actions against companies whose charters provide that the assignee may have a personal right of action as if he were the orignal party insured.

3 *Denio*, 254, 256; *Conover* v. *Mutual Ins. Co. of Albany. The charter being found in Session Laws of N. Y.*, 1836, *p.* 314, *id. p.* 42 *and seq.*, *id. p.* 44, §§ 7, 8, 9; 1 *Comstock*, 290, *S. C.*; 5 *Wendell*, 200, 203; *Granger* v. *Howard Insurance Co.*; 4 *Hill*, 187; *Mann* v. *Herkimer County Mutual Ins. Co.*; 2 *Duer on Insurance*, 51, *note b*.

(3.) So far as an insurable interest at the time of the loss is requisite, the plaintiffs had the proper interest. No stranger owned the goods or any share in them. All the interest in the goods was in the plaintiffs; and it is immaterial whether they owned equal shares or unequal shares, or one owned the whole, so long as they represented all the interests, and the entire loss was among them.

III.

The clause in question is to be construed strictly; and it must not be allowed to defeat the indemnity, which is the motive and main intent of the contract of insurance.

5 *Pickering*, 76, 80, *Lazarus* v. *Commonwealth Insurance Co.*
13 *id.*, 81, *S. C.*
3 *Fairfield*, 44, *Lane* v. *Maine Fire Ins. Co.*
1 *Phillps on Insurance*, § 124, 3*d Ed.*, *p.* 83.

IIII.

The sale and assignment by Sinclair to Dix and Harris was no breach of the policy, and did not avoid it.

(1.) The clause in the policy is intended to save the company from becoming insurers of strangers whom they have not named. The company determines upon certain persons whom it will be willing to have for owners during the risk, and by this clause means to guard against the imprudence or dishonesty of other persons who may become owners.

(2.) The company has no motive to require the ownership

among several joint owners to remain unchanged among themselves. They may be equal partners, or one may own ninety-nine per cent., and another only one per cent.; yet the company does not require these proportions to remain unaltered. One may transfer half or quarter or all of his share to another so long as no stranger is made an owner.

(3.) If this clause of the policy were construed liberally, it would render a policy void whenever several partners change their relative shares in a firm. For example, when A, owner of two-thirds of the capital, sells a fourth of his share to B, who previously held but one-third, although the firm continues as before, yet it is a transfer of an interest from one partner to another partner; and if courts would seek occasion to vitiate policies by construing forfeiture clauses liberally, such a transaction between partners would fall by the operation.

(4.) But the rule of strict construction of forfeiture clauses prevents such a result. The intention of the contracting parties, the motives governing their minds in the use of terms, the actual views they entertained—as well the assured who paid to be made secure, as the insurers who took the premium as the price of securing the indemnity—being looked at, the clause is at once seen to have no relation to mere dealings of co-partners *inter se*. "Transfer or change of title" is seen to mean a passing of title from persons named in the policy to persons not named therein, a transfer from the assured to others not assured, a change of title by change of persons holding title, shifting the title from old parties to new parties.

(5.) There is a propriety in having the insurance cease when goods are sold off to customers. That is strictly an *alienation*—the term often used in policies—being a transfer to a stranger. Thus every sale of goods

takes so much out of the risk, and the policy is framed to cover new purchases, by which the stock is supplied.

3 *Fairfield*, 44, *Lane* v. *Maine Fire Ins. Co.*

(6.) But in the case at bar there was no such alienation, nor any such transfer or change of title in the property, as the policy was meant or designed to prohibit. There was nothing done by which a new person became insured. Both Dix and Harris were satisfactory to the company, and the interest had not gone from their hands. The transfer was not more in fact than often occurs in a firm without the forms of a transfer, when the course of drawing out of and paying into the common fund by several partners has brought the affairs into such a state that the interest of one partner in the stock has doubled, and the interest of another has become reduced to nothing. Indeed it often happens that the buying out of one partner by another is a mere adjustment in form of what actually existed before by means of such reduction of a partner's share.

(7.) By strict construction of this forfeiture clause, all difficulties and absurdities are avoided, and the universal intention and understanding of parties dealing with insurance companies are sustained. Let transfer of title mean a transfer from the assured, not among them; let change of title mean a change from them, not among them. Then transfer and change of title, like the analogous term alienation, are words fully satisfied and exhausted. Their literal meaning is given to them, and by strict construction they must have no more.

(8.) This clause requires a strict construction for another reason, viz.: there is no provision for a transfer or change of title being consented to by the company, or the validity of the policy being preserved in such case by consent or endorsement.

The passage immediately before the alienation clause

concerns the policy not the property. It provides that the policy shall not be assigned without the consent of the company endorsed on it; and if the policy is assigned without such consent it shall become void. Thus, the transfer of the policy may be consented to, and it avoids the policy only when done without consent. But the following clause, forbidding the transfer of the property, has no qualification. The transfer or change of title to the property intended by this clause therefore, is such a transfer or change as would be inadmissible altogether; one for which no mode of consent is to be provided; in short, a transfer or change by which the title or a share of it leaves the persons insured and goes away to strangers.

(9.) The course of authority is clearly with the plaintiffs on this point.

Parson's Mercantile Law, 533, speaking of the effect of transfers of property insured:

"If many owners are insured in one policy, a transfer by one or more to strangers, without the act or concurrence of other owners, will avoid the policy for only so much as is thus transferred. And if it be transferred to one or more of the insured, it is, we think, no alienation, and makes no forfeiture."

Angell on Life and Fire Insurance, § 197, *p.* 233, states the distinction between a transfer between several persons jointly insured and a transfer to a stranger; in the former case, it is not an alienation nor a breach of the condition.

7 *Barbour*, 570, 575, 576, *Tillou* v. *Kingston Mutual Ins. Co.* (*An.* 1850.)
1 *Selden*, 405, *S. C.* (*An.* 1851.)

This was insurance on a building, and the several parties held as tenants in common, each holding an undivided share. The difference between that and an

insurance of partnership goods, where each partner has his right in the resulting balance of the firm's property and effects, rather than his specific share in each piece of goods, is obvious. The reversal of the judgment of the Supreme Court also was partial and not total. The judgment below was for $2,687 15, and it was only reduced on appeal to $2,146 52. (1 Selden, 408.) The reduction of the amount of recovery by a small per centage leaves the decision but little force as an authority, inasmuch as it was not a principal adjudication on the main point of the cause.

2 *Comstock*, 210, *Murdock* v. *The Chenango Mutual Ins. Co.* (*An.* 1849.)

This also is a case of insurance on a building, and subject to the peculiarities of a tenancy in common in the assurer.

3 *Denio*, 301, *Howard* v. *The Albany Ins. Co.* (*An.* 1846.)

In this case Judge Bronson had laid down a rule by which the partners Dix & Harris might, in their own names, recover for their original shares, but not for Sinclair's share. The property insured was partly real and partly personal.

But the whole subject was again brought under consideration in the New York Supreme Court, before Judges Roosevelt, Edmonds, Edwards and Mitchell, in 1853, in the following case:

16 *Barbour*, 511, *Wilson* v. *Genesee Mutual Ins Co.*

In this case two partners took insurance on their stock of goods. One sold out to the other. The Court considered the matter fully, and decided that such a transfer was not within the principle on which the prohibition of the policy was founded.

It will be observed that Judge Edmonds, who united in this decision, (16 Barb., 514, nt.,) had also been a judge in the Court of Appeals in the time of 1 Selden. (1 Seld., p. iii.)

This opinion was re-affirmed in the Supreme Court by Judges Welles, Strong and Smith, in 1857, in 23 *Barbour*, 623, 627, *Dey* v. *Poughkeepsie Mutual Ins. Co.* "If this assignment had simply been from one of the assured to the other, they being partners, it would not, for the reasons stated by Roosevelt, Justice, in Wilson *v.* The Genesee Mutual Insurance Company, (16 Barb., 511,) have affected the policy. But as it is, the company are called upon to litigate with a party with whom they had not contracted, and which their policy protected them against." Judge Welles, who delivered this opinion, was also in the Court of Appeals in 1 Selden. (1 Seld., p. iii.)

The case in 16 Barbour (An. 1853,) thus re-affirmed in 23 Barbour, (An. 1857,) is now the controlling authority on this subject. It is a case originally determined by four judges of the highest standing on questions of commercial law, and occupied with the business of the city of New York, and the ruling subsequently adopted by three other judges of distinction. The reasoning of Judge Roosevelt in the opinion (16 Barb., 512,) is unanswerable.

This rule is now deemed thoroughly established in the State of New York.

It is also seen above to be so laid down in the two best treatises on commercial law and fire insurance, viz., Parson's Mercantile Law and Angell on Insurance.

IV.

The defence made in this cause deserves no favor from the Court.

It is an unworthy attempt to escape from a fair liability by a perversion of terms used in the policy, giving them a sense which it is entirely certain the plaintiffs did not deem them to have. If the assured had construed this clause as the defence now does, they would have obtained other in-

surances on their goods; but correctly reasoning like merchants about a commercial contract, and following the usual understanding that a policy is intended as an indemnity and not as a snare, they reposed on these policies after making one of those changes in relative interests which are of common occurrence among copartners If there was even a pretence of fraud or unfairness set up by the defendants it would seem a less scandalous defence. The defendants have no such apology; they stand upon the bare ground of a forfeiture to be made out by a liberal construction of a clause in the policy; and they, therefore, can have no favor from the Court.

Case No 68 - 154

Jack N. Dix et al

vs

The Chicago City Insurance Co

Filed May 12. 1859
L. Leland
Clerk

V.

(1.) But if the Court differ from us in the foregoing positions, and hold that the clause under consideration has been violated, it cannot be said to have been violated, except as to Sinclair's interest. His was the only interest transferred, and the words "*such insurance*" apply only to such property covered by the insurance, as has been transferred.

Parson's Mercantile Law, p. 533.

(2.) To say that this clause applies to partners in the same manner as to tenants in common, is to say that each partner's specific interest in the property is separately, particularly and specifically insured; and this is analogous to an insurance of different and specific pieces of property in the same policy. But, in the latter case, where one of the pieces of property has been alienated or transferred contrary to a condition of the policy of this kind, it has been held that the policy is avoided only *pro tanto*, as to the property transferred.

6 *Cushing*, 342, *Clark vs. The New England Mutual Fire Insurance Company.*

Hence, by analogy, one of these interests only having been transferred, the policy is avoided only *pro tanto*, as to the interest transferred.

(3.) Dix and Harris, not having alienated, have a remaining insurable interest at the time of the loss, which entitled them to recover *pro tanto.*

3 *Burrows*, 1512, *Reed vs. Cole.*
4 *Mass.* 330, *Stetson vs. The Mass. Ins. Co.*
16 *Wend.* 385, *Ætna Fire Ins. Co. vs. Tylor.*

(4.) Where a condition of the policy is broken, the consequence of which is to avoid the policy, it only avoids it as to that, or so much of the property insured as is obnoxious to the breach.

7 Hill, 122, *Trench and another vs. The Chenaugo Co. Mut. Ins. Co*

In this case there was a condition that applications should be in writing, and if *any* misrepresentation or concealment should be made, "such insurance shall be void and of no effect" (almost the identical words used in the clause in question). Yet, it was held that as the concealment or misrepresentation which constituted the violation in that case was only as to a part of the property insured, the policy ceased only as to that part.

So in the case at bar, Dix, Sinclair and Harris being insured on their respective separate and specific interests in the property insured, like tenants in common, as contended by the defendants, and the clause of the policy being violated only as to the separate interest of Sinclair, the interest of Dix and Harris remaining the same, the policy is only avoided as to Sinclair's interest, and Dix and Harris should recover.

(5.) If Dix and Harris alone are entitled to bring suit, the Court will allow us to amend, by striking out the name of Sinclair, and altering the declaration in conformity thereto.

Cyrus Beckley
Plaintiff's atty.

Edmund Canfield
President

William S. Bates
Secretary

Joel A. Dix vs Thos.

vs

The Chicago City Ins. Co.

Sci fa

Served by reading to the within
named defendant
Edmund Canfield
President of the Chicago
City Ins Comp this
7th day of December

John Gray Sheriff
By A.B. Deering Dept.

One Service 50 Paid
Mileage 10 Plff Atty
Ret 10
70

Filed Jan. 2d. 1858
L. Leland
Clerk
C. Bentley

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of Cook Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Joel H. Dix, Horatio G. Sinclair & George J. Harris to the use of James B. Southworth, Albert Thomson, Valorus Southworth and Harvey Harrington Jr. plaintiffs, and The Chicago City Insurance Company defendant, it is said that manifest error hath intervened, to the injury of the said plaintiffs

as we are informed by their complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Chicago City Insurance Company

that said Company be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if said Company shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Chicago City Insurance Company notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of December in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight.

L. Leland
Clerk of the Supreme Court.

by J. Bellrie Deputy

Supreme Court
State of Illinois

Case No 6814

Lord N. Dey et al

vs

The Chicago City
Insurance Co

68 - 154

Filed May 18. 1869
L Leland
Clerk

adjudicated—briefly touched upon—with no reason assigned, nevertheless it seems the Court of Appeals themselves, in a subsequent case. Grosvenor vs. Brooklyn Insurance Co., vol. 7, American Law Register, page 118, not only disregarded the opinion in 1 Selden, on the main point of the case, but absolutely overruled that decision.

(3.) The counsel's contempt for Barbour's Reports does not unsettle the law therein announced.

(4.) The defendants say: "That case is brought in the name of the assignee." True, because the statute expressly required it.

(7.) The defendants make a distinction between "interest of the insured" and "undivided interest." What is the difference between the sale of an interest and undivided interest? The counsel seem to suppose there could be no such thing as the sale of an undivided interest to a stranger or third party.

(12.) The very recent case in 23 Barbour fully settles the point in favor of the plaintiffs, and yet the defendants seem to regard the decision as in their favor. We can only refer the Court to the case.

CYRUS BENTLEY,

Attorney for the Plaintiffs in error.

acknowledgment of the Court, that the case in 1 Selden, on which the decision in 30 Penn. was founded, was overruled.

The case in 3 Denio, 302, was a case of tenancy in common, and not of co-partnership. No reason was given for the opinion of the Court, and no authorities cited. On the contrary, Justice Bronson gave a learned dissenting opinion, and laid down a rule by which the remaining partners Dix and Harris, might, in their own names, recover for their original shares, but not for Sinclair's share. The property insured was partly real and partly personal.

But say the defendants, "Dix, Sinclair and Harris had no joint interest in the property insured," and, "an action cannot be maintained in the name of Dix, Sinclair and Harris, when Sinclair has no interest in the suit, or title in the property destroyed," and yet they pretend by the demurrer, if notice of the transfer by Sinclair to Dix and Harris had been given to the company, and they consented to the same, all would have been right. How, may we ask, in such a case, could a suit be brought, except in the names of all the three?

The fact is, the joint legal interest remained, and the recovery is for the benefit of those having the equitable interest.

Again, say the defendants, "It is made a condition precedent to the plaintiff's right to recover, that they all should continue to own the goods. It is a special contract, and the party can only recover upon the special contract, when they have fulfilled all the conditions thereof on their part to be kept and performed."

We answer, that it is *not* made a condition that *all* should continue to own the goods, and here is just where the defendants make their great mistake. Had the policy any such condition we should surrender this controversy, and if it was the intention of the insurers that *all* the partners should continue to own the goods, why was not that simple condition inserted? The condition is that the goods, or any other undivided interest therein should not be sold, so as to admit any new parties or strangers into the ownership or possession of them—but not that the three original parties should *all* remain.

The defendants say we rely mainly on the case of Wilson vs. Genesee Insurance Co. 16 Barbour, 511, but they do not regard it as law for various reasons assigned, some of which we will notice.

(1.) They say it is not law, because "It is placing the opinion of an inferior Court against a superior Court;" this superior Court is the Court of appeals, and the decision is that of the case in 1 Selden. But presumptuous as it may seem for the Supreme Court to disregard the opinion rendered in 1 Selden on a point which was not the principal one

sider the case cited (meaning the case before alluded to by the Court, viz: 1 Selden, 405) as authority, being directly on the issue and fully determining this part of the case."

Now, as to the case in 1 Selden, we have already given our views; but we may further remark, if the Supreme Court of Pennsylvania, at any subsequent time, should come to the conclusion that the case in 1 Selden is not entitled to consideration and importance as an authority, but should hold it as having been overruled on any point specially adjudicated in that case, though it might not be the point now before this Court, it could hardly be said that the same Court would regard the case (1 Selden) entitled to consideration and importance as an authority upon this point.

"*Falsus in uno, Falsus in Omnibus.*"

The principal adjudication in 1 Selden, was upon another point—the main point in the case. The one now before this Court, was a minor point in that case, barely touched upon by the Court, yet sufficiently, we admit, to overrule the decision in 7 Barbour, and yet the 1 Selden, has been overruled, on its principal adjudication, and the very oracle that uttered the decision in 30 Pennsylvania, has subsequently declared this case in 1 Selden, (the only authority on which they base their decision) *overruled.*

See State Mutual Insurance Co. vs. Roberts, decided in the Supreme Court of Pennsylvania, in January, 1859, reported in the American Law Register, February number, 1859, page 229.

In that case the Court say:

"In Grosvenor vs. the Atlantic Mutual Insurance Company, recently decided by the Court of Appeals, and reported in 7 American Law Register, 117, it, (referring to the case of Traders' Insurance Co. vs. Roberts, 9 Wendell, 404,) has been thoroughly reviewed and overruled. *So also has Tillou vs. The Kingston Insurance Company.*" (1 *Selden.*)

The case of Grosvenor vs. The Atlantic Insurance Company, was a case of alienation to a stranger, by the party insured, subsequent to his having mortgaged the premises and assigned the policy. The question was, whether this alienation avoided the policy as to the mortgagee. The Court held that it did, overruling the case in 9 Wendell, 404, and the case in 1 Selden, 405.

We think therefore that the authority cited from 30 Penn. 311, which is really the only case directly in point against the plaintiffs, is shorn very materially of its strength as an authority, by the subsequent

reasonable one when construed as we understand it, but most unreasonable when the construction contended for by the defendants is given to it. And the authorities cited by the defendants on this point, need no notice from us, as they may be equally quoted on our behalf, as on that of the defendants.

We also agree that the intentions of the parties must be looked into in giving a construction to their contracts, and those intentions, when ascertained, must govern. And we contend that that construction which has the greatest weight of reason in its favor, should be taken as the intention of the contracting parties, and that should govern.

The defendants say: "the sale and transfer by Sinclair to Dix and Harris, by authority as well as principle, avoided the policy, and the plaintiffs cannot recover."

We reply—on principle clearly, the policy was not avoided, and we think the current and weight of authority is against such an avoidance.

But coming to the authorities on which the defendants rely, viz:

2 Comstock,	210;	1 Selden,	405;
16 Peters,	496;	4 Selden,	299;
3 Denio,	302;	18 Missouri,	128;

And 30 Pennsylvania R., 311.

We remark, as to 2 Comstock, 210, and 1 Selden, 405, as authorities upon this particular point, we have before given our views. As to 16 Peters, 496, the question now before the Court did not come up in that case, and in the case in 4 Selden, 299, there is nothing in the slightest degree touching this case.

In 18 Missouri, 128, a very different state of facts existed. There was a sale between the partners—an entire dissolution of the partnership—a separation of the property and conversion to the separate and private use and ownership of the individual members of the firm, and an actual removal of a part, at least, of the property insured, from the premises where the same were insured. We do not think the cases are similar in point of fact. In the case at bar, the partnership continued and the goods remained where they were originally, and no change whatever took place with respect to the same.

The case cited from 30 Pennsylvania, 311, is perhaps a more difficult case for the plaintiffs; yet, with regard to it, we would remark—

It is the only authority in Pennsylvania on this question. It was an open question in that State, at the time that decision was rendered, and standing alone as an authority upon this point in that State, we are led to examine on what the opinion of the Court is founded. The Court say: "We have no authority in our own Reports on the point, but con-

(5.) If Dix and Harris alone are entitled to bring suit, the Court will allow us to amend by striking out the name of Sinclair, and altering the declaration in conformity thereto.

REMARKS ON THE ARGUMENT OF THE DEFENDANTS IN ERROR.

The defendants say: "The language of the condition is broad and comprehensive as human language can be, and it will be impossible by any process of reasoning to show that it does not meet and cover this very case."

It is true the language is broad and comprehensive in the direction in which it was intended to apply, but it cannot be stretched and twisted to apply to what it was never contemplated or dreamed of by the parties, it should be made to apply.

Again say the defendants: "The policy says a transfer or change of title in the property insured," and "the declaration avers that Sinclair sold and transferred his interest in the insured property. Did not that change the title?" And "The title was in different persons from what it was when the property was insured."

We answer as we have said before: it did not change the title from old parties to new parties—from those insured to strangers. And we say, the title was not in different persons from what it was when the property was insured. The same persons, Dix and Harris, whom the company insured, still held the title to the property after the transfer of Sinclair's interest to them.

"But," say the defendants, "the matter is placed beyond a question by the balance of the restriction, *or of an undivided interest therein.* There has been a change of title to an undivided interest in the insured property."

We answer: Not at all, unless the undivided interest of Sinclair was sold and transferred to a third party, a stranger, not known in the contract. Then and then only, was there, or could there be within the scope and meaning of the restriction, a sale or transfer of an undivided interest.

The defendants say, "this provision is binding upon the parties," etc. We say also that it is binding, that it is valid, that furthermore it is a

only interest transferred, and the words "*such insurance*," apply only to such property covered by the insurance, as has been transferred.

Parson's Mercantile Law, p. 533.

(2.) To say that this clause applies to partners in the same manner as to tenants in common, is to say that each partner's specific interest in the property is separately, particularly and specifically insured; and this is analogous to an insurance of different and specific pieces of property in the same policy. But in the latter case, where one of the pieces of property has been alienated or transferred contrary to a condition of the policy of this kind, it has been held that the policy is avoided only *pro tanto*, as to the property transferred.

6 Cushing, 342, Clark vs. The New England Mutual Fire Insurance Company.

Hence, by analogy, one of these interests only having been transferred, the policy is avoided only *pro tanto*, as to the interest transferred.

(3.) Dix and Harris not having alienated have a remaining insurable interest, at the time of the loss, which entitled them to recover *pro tanto*.

3 Burrows, 1512, Reed vs. Cole.
4 Mass. 230, Stetson vs. The Mass. Insurance Co.
16 Wend. 385, Ætna Fire Insurance Co. vs. Tyler.

(4.) When a condition of the policy is broken, the consequence of which is to avoid the policy, it only avoids it as to that, or so much of the property insured as is obnoxious to the breach.

7 Hill 122, Trench and another vs. The Chenango Co. Mutual Insurance Company.

In this case there was a condition that applications should be in writing, and if *any* misrepresentation or concealment should be made, "such insurance shall be void and of no effect," (almost the identical words used in the clause in question.) Yet, it was held, that as the concealment or misrepresentation, which constituted the violation in that case was only as to a part of the property insured, the policy ceased only as to that part.

So in the case at bar, Dix, Sinclair and Harris being insured on their respective separate and specific interests in the property insured, like tenants in common, as contended by the defendants, and the clause of the policy being violated only as to the separate interest of Sinclair, the interest of Dix and Harris remaining the same, the policy is only avoided as to Sinclair's interest, and Dix and Harris should recover.

The case in 16 Barb. (Anno 1853,) thus re-affirmed in 23 Barb. (Anno 1857,) is now the controlling authority on this subject. It is a case originally determined by four Judges of the highest standing on commercial law, and occupied with the business of the city of New York, and the ruling subsequently adopted by three other Judges of distinction.

The reasoning of Judge Rosevelt in the opinion 16, Barb. 512, is unanswerable.

This rule is now deemed thoroughly established in the State of New York.

It is also seen above to be so laid down in the two best treatises on commercial law and fire and insurance, viz: Parsons Mercantile Law, and Angell on Insurance.

FOURTH POINT.

The defence made in this cause deserves no favor from the Court.

It is an unworthy attempt to escape from a fair liability, by a perversion of terms used in the policy, giving them a sense which it is entirely certain the plaintiffs did not deem them to have. If the assured had construed this clause as the defense now does, they would have obtained other insurance on their goods; but correctly reasoning like merchants about a commercial contract, and following the usual understanding that a policy is intended as an indemnity and not as a snare, they reposed on these policies after making one of those changes in relative interests, which are of common occurrence among co-partners. If there was even a pretense of fraud or unfairness set up by the defendants, it would seem a less scandalous defense. The defendants have no such apology; they stand upon the bare ground of forfeiture to be made out by a liberal construction of a clause in the policy; and they therefore can have no favor from the Court.

FIFTH POINT.

(1.) But if the Court differ from us in the foregoing positions, and hold that the clause under consideration has been violated, it cannot be said to have been violated, except as to Sinclair's interest. His was the

goods, where each partner has his right in the resulting balance of the firm's property and effects, rather than his specific share in each piece of goods is obvious.

(4.) The difficulty in this case was, that the declaration contained an averment that both the plaintiffs were interested in the property at the time of the loss, and the evidence clearly disproved the averment, and made it impossible for the plaintiffs to recover upon the case presented But in the case at bar, the averment is that Sinclair had parted with his interest to his co-partners, and Dix and Harris alone were interested in the property at the time of the loss.

From these and other considerations, which will arise upon an examination of the case, the case in 2 Comstock has not been regarded in New York where it was rendered as settled law to bar the right of *co-partners* to recover, though one of their number has parted with his interest to the others, in a case properly presented upon the pleadings, however it might be in a case of tenancy in common. This is evident from the fact that the Supreme Court in 1853, composed of such men as Edmonds, Mitchell, Edwards and Rosevelt, Justices, in the case of Wilson vs. The Genesee Insurance Co., reported in 16, Barbour 511, held the contrary. The case is precisely parallel with the case at bar, and the decision is reasoned out by the Court.

It was a case in which two partners took insurance on their stock of goods. One sold out to the other. The Court considered the matter fully, and decided that such a transfer was not within the principle on which the prohibition of the policy was founded. It will be observed that Judge Edmonds, who united in this decision (16, Barbour 514, note,) had also been a Judge in the Court of Appeals in the time of 1 Selden, (1 Selden, page 3.)

And again, this opinion thus pronounced in the 16 Barbour 511, was re-affirmed in the Supreme Court by Judges Strong, Welles and Smith, in 1857, in the case of Day vs. Poughkeepsie Mutual Insurance Co., reported in 23 Barbour, 623, 627. The Court use the following language, "If this assignment had simply been from one of the assured to the other, they being partners, it would not, for the reasons stated by Rosevelt, Justice, in Wilson vs. The Genesee Mutual Insurance Company (16 Barbour, 511) have affected the policy. But as it is, the company are called upon to litigate with a party with whom they had not contracted, and which their policy protected them against. Judge Welles, who delivered this opinion was also in the Court of Appeals in 1 Selden, (1 Seld. p. 3.)

and a transfer to a stranger; in the former case it is not an alienation, nor a breach of the condition.

7 Barbour, 570, 575, 576, Tillou vs. Kingston Mutual Insurance Co. (Anno 1850)

This is a decision of the Supreme Court reported in Barbour's Reports—Reports, by the way, which the counsel for the defense affects great contempt for, and remarks that law can be found in these reports to suit any case. I think the gentleman will find upon examination that while some of the decisions reported by Barbour may be overruled, nevertheless the great majority are sustained by the Court of Appeals, and that these very decisions found in Barbour's Reports are the substantial texture of the prevailing law of the State of New York.

Judge Barculo, of the city of Poughkeepsie, who pronounced the decision in the case of Tillou vs. Kingston Mutual Insurance Co., has the reputation in the district where he presides of being deeply learned in the law, and any one familiar with his decisions, must not only be convinced of this, but also that his decisions are founded in good sense and sound reasoning.

But this decision in 7 Barbour, it is said, is overruled by the Court of Appeals, as reported in 1 Selden, 405 (Anno 1851). Such is the fact; but it is overruled without any reason assigned by the Court. The reversal of the judgment of the Supreme Court also, was partial and not total. The judgment below was for $2,687 15, and it was only reduced on appeal to $2,146 52 (1 Selden, 408). The reduction of the amount of recovery by a small per centage, leaves the decision but little force as an authority, inasmuch as it was not a principal adjudication on the main point of the case.

This overruling in Selden is founded entirely on the case of Murdock vs. The Chenango Mutual Ins. Co., 2 Comstock, 210.

Indeed, all the authorities cited by the counsel for the defendants, bearing any analogy to the case at bar, with perhaps a single exception, are based upon this decision in 2 Comstock.

In this case, a policy of insurance was effected for two tenants in common on a building, and with regard to it, we may remark—

(1.) The adverse of the decision by the Court of appeals, was held by Judge Edmonds, in the circuit where the cause was first heard, who overruled the motion for a new trial.

(2.) The contrary was decided by the Supreme Court, in denying the application for a new trial, on a bill of exceptions.

(3.) It was a case of tenancy in common, not a case of co-partnership. The difference between that and an insurance of partnership

to by the company, or the validity of the policy being preserved in such case by consent or endorsement.

The passage immediately before the alienation clause concerns the policy, not the property.

It provides the policy shall not be assigned without the consent of the company endorsed on it; and if the policy is assigned without such consent, it shall become void. Thus the transfer of the policy may be consented to, and it avoids the policy only when done without consent. But the following clause forbidding the transfer of the property has no qualification. The transfer or change of title to the property intended by this clause, therefore, is such a transfer or change as would be inadmissible altogether; one for which no mode of consent is to be provided; in short, a transfer or change by which the title or share of it leaves the person insured and goes away to strangers.

The demurrer of the defendants, indeed, implies that there is a modification of the clause in question, providing that a transfer of the property insured may be consented to and ratified by the company, upon proper notice given. But a reference to the clause itself shows the contrary.

The defendants, conscious that their defense is purely technical, yet would not have it understood that partners cannot under *any* circumstances whatever, transfer their respective interests in the copartnership property, but may make such transfers under even the clause in question, provided they give notice to the insurers in the same manner as transfers of policies may be made, but this position cannot be maintained, as there is no provision for notice to and consent of insurers in cases of transfers of property, and the defendants in insisting upon the construction they contend for, are driven to the unpleasant and unreasonable alternative of denying to partners all right of purchase and sale of their copartnership stock *inter se*, without defeating the policies of insurance which they may have effected upon such property.

(9.) The course of authority is clearly with the plaintiffs on this point.

Parson's Mercantile Law, 533.

"If many owners are insured in one policy, a transfer by one or more to strangers, without the act or concurrence of other owners, will avoid the policy for only so much as is thus transfered. And if it be transfered to one or more of the insured, it is, we think, no alienation and makes no forfeiture."

Augell on Life and Fire Insurance, section 197, page 233, states the distinction between a transfer between several persons jointly insured,

And it is plainly only as to such that the policy does cease. And any transfer or change of the property which results in the parties insured still retaining the property, is not a change or transfer which avoids the policy.

(6.) But in the case at bar there was no such alienation, nor any such transfer or change of title in the property as the policy was meant or designed to prohibit. There was nothing done by which a new person became insured. Both Dix and Harris were satisfactory to the company, and the interest had not gone from their hands. The transfer was not more in fact than often occurs in a firm, without the forms of a transfer, when the course of drawing out of and paying into the common fund by several partners, has brought the affairs into such a state, that the interest of one partner in the stock has doubled, and the interest of another has become reduced to nothing. Indeed, it often happens that the buying out of one partner by another is a mere adjustment in form of what actually existed before, by means of such reduction of a partner's share.

Indeed I do not see but that the construction of this clause, which the defendants contend for, would prevent all drafts by the partners upon the common fund. Every item of cash drawn by one partner, and which is charged to him on the books of the firm, is the consideration of that value of his interest in the property of the firm, covered by the insurance. It is a transfer *pro tanto* of an undivided interest in the property insured, and a violation of the clause under consideration, if the construction contended for by the defendants be the correct one. It is as absolutely a sale to that extent of his interest in the property, as if he made and executed a bill of sale. Indeed the entries upon the books constitute all the formalities of a bill of sale. Hence we see in what difficulties and absurdities we are involved by the position taken by the defendants.

But—

(7.) By strict construction of this forfeiture clause, all difficulties and absurdities are avoided, and the universal intention and understanding of parties dealing with insurance companies are sustained.

Let transfer of title mean a transfer from the assured, not among them; let change of title mean a change from them. not among them. Then transfer and change of title, like the analogous term alienation, are words fully satisfied and exhausted. Their literal meaning is given to them, and by strict construction they must have no more.

(8.) This clause requires a strict construction for another reason, viz: there is no provision for a transfer or change of title being consented

to mean a passing of title from persons named in the policy to persons not named therein—a transfer from the assured to others not assured—a change of title by change of persons holding title, shifting the title from old parties to new parties.

Such is the reasonable and the only reasonable construction that can be given to this provision. There can be no valid reason for the construction contended for by the defendants. The only pretext adduced by the defendants' counsel is, that the insurers were interested in having all these parties, and especially this Mr. Sinclair, remain in the care and custody of the property, as adding to the security against fire. In other words, that this Sinclair who transferred his interest to the other two partners, was the one upon whom they especially relied for the protection of this property against fire.

The futility of this reason will appear, when we observe that there was no provision of the contract whatever, requiring Sinclair to remain in the care and management of the property. On the contrary, they well knew that these partners were like partners generally—one or others of the firm being indifferently in the management of the property, or absent entirely from home on the business of the concern, as the case might be. How often is it (and it does not appear that such was not the case with Sinclair) that one of the partners is a silent pastner, having no care or management of the property or business whatever. Again it is often the case, that one of three partners is almost constantly absent, making purchases for the house; another making collections and securing customers, and the third at home in the care of the property and management of the business. Hence we see how vain is the supposition that insurers contemplate, when writing policies for partners, that each and every one, or any particular one, is to be in the management of the property insured. And thus we see also how the construction contended for by the defendants is shorn of every possible pretext on which it may rest.

(5.) There is a propriety in having the insurance cease, when goods are sold off to customers. That is strictly an *alienation*—the term often used in policies—being a transfer to a stranger. Thus every sale of goods takes so much out of the risk, and the policy is framed to cover new purchases by which the stock is supplied.

3 Fairfield, 44, Lane vs. Maine Fire Insurance Co.

A valuation of the property must be had at the time of the loss. Affidavits of the amount of the loss must be made, for the reason that such goods as have been sold, actually parted with and gone into the hands of other parties, are not to be taken into the account of the loss.

the co-partnership, to ascertain precisely what the respective interests might be in the property insured, entering the results of such investigations upon their books, as a basis of the contract; or to require precisely those respective interests to be stated in the application made for insurance, which application is a basis of the contract, and then to hold these insured parties in case of loss, in their proofs of such loss to show that these interests continued from the time of insurance down to the time of loss, the same, without any change among the parties whatever.

And yet according to the construction asked to be placed upon this clause, if the interests of the several parties do not remain the same at the time of the loss, if one has sold a part of his interest to his copartners, there has been a sale or transfer of an undivided interest in the property, and hence a violation of the clause in question.

I very much doubt whether the counsel for the defendants would claim, that a construction should be given to this clause, which would stretch it thus far; yet I submit whether it is carrying it any farther in principle, than it is sought to be carried in the case at bar. What difference in principle is there between a partner selling a part of his interest in the partnership property, and selling the whole. I know of none.

And hence it follows:

(3.) If this clause of the policy were construed liberally, it would render a policy void, whenever several parties change their relative shares in a firm. For example, when A., owner of two-thirds of the capital, sells a fourth of his share to B., who previously held but one-third, although the firm continues as before, yet it is a transfer of an interest from one partner to another.

And if Courts would seek occasion to vitiate policies by construing forfeiture clauses liberally, such a transaction between partners would fall by the operation.

Thus all trade in the capital stock between the copartners would be interdicted. This is the logical deduction from the position taken by these defendants.

The bare statement of the proposition reveals the absurdity of the construction contended for.

(4.) But the rule of strict construction of forfeiture clauses prevents such a result. The intention of the contracting parties, the motives governing their minds in the use of terms, the actual views they entertained—as well the assured who paid to be made to be secure, as the insurers who took the premium as the price of securing the indemnity—being looked at, the clause is at once seen to have no relation to mere dealings of copartners *inter se*. "Transfer or change of title" is seem

THIRD POINT.

The sale and assignment by Sinclair to Dix & Harris, was no breach of the Policy, and did not avoid it.

1. The clause in the Policy is intended to save the Company from becoming insurers of strangers whom they have not named.

The Company determines upon certain persons whom it will be willing to have for owners during the risk, and by this clause means to guard against the imprudence or dishonesty of other persons who may become owners.

This clause is not a new one. It is taken from policies much older than these defendants. The term formerly employed was "alienation," the policies providing against any *alienation* of the property insured—the literal meaning of which is a conveyance to a stranger, and that is all that this clause is intended to provide against. This contract of insurance is a personal contract. The insurers insist upon knowing the parties whom they insure, and it is a reasonable request. They have a right to pass upon all the parties whom they insure, and determine from what they personally know of the applicants and from all they can learn of them, whether they are safe, careful and prudent men, or whether they may not be men of reckless and improvident habits, such, as in whose hands property might be in imminent danger of fire.

They have a right thus to pass upon the parties making application for insurance, and upon all the parties, and to say as they said in the case at bar, we are satisfied and willing to contract with you, but as to strangers, whom we know nothing of, we provide against such by the clause in question.

These are the considerations upon which the clause is inserted in the policy, and upon which the contract of indemnity is made. Yet we are told if one of the parties retires, although they who remain are the same parties who were passed upon, and recognised as the custodians of the property, without the introduction of any stranger whatever, this clause of the policy is broken.

Nothing it seems to me can be more preposterous.

2. The company has no motive to require the ownership among several joint owners to remain unchanged among themselves. They may be equal partners, or one may own ninety-nine per cent. and another only one per cent.; yet the company does not require these proportions to remain unaltered. One may transfer half, or quarter, or all of his share to another, so long as no stranger is made an owner.

Surely it would be a most anomalous proceeding, for insurers when writing a policy for partners, to go into an investigation of the affairs of

SECOND POINT.

The clause in question must be construed strictly; and it must not be allowed to defeat the indemnity, which is the motive and main intent of the contract of insurance.

5 Pickering, 76, 80; Lazarus vs. Commonwealth Insurance Co., 13 id. 81, S. C.

4 Fairfield, 44, Lane vs. Maine Fire Ins. Co.

1 Phillips, on Insurance, section 124, 3d edition, page 83.

And what is a strict construction? One simply, of which of the language may be susceptible—by possibility—one secured only by a perversion of terms from their obvious and common sense import? Or is a strict construction one strictly in accordance with the obvious meaning and intent of the parties, fairly borne out by the terms employed? and this obvious meaning and intent of the parties in the adoption of the clause of the policy in question, is manifestly, that in case of any sale, transfer, or change of title in the property insured by this Company, or of any undivided interest therein, *to any other person or persons than the insured*—not a sale or transfer among themselves one to another, or one to the others. That, the underwriters cared nothing about—they had considered these parties and were willing to insure *them* one and all, and it was of no consequence whether in the management of their co-partnership business, one or all should become the proprietors and custodians of the property, and thus the guardians of the same against fire. But as to strangers coming in to the ownership, possession and management of the property, that was what the insurers desired to provide against, and that was what the insured agreed should be provided against, and that and no more was provided against by this clause, and a strict construction will hold these defendants to that, and the indemnity intended be preserved.

But that loose latitudinarian construction which applies these terms sale and transfer not only to strangers, but to the parties themselves, would go beyond the obvious scope and intent of the contract, and the indemnity be lost. Every one must feel that the defense here interposed is technical, a mere dodge of responsibility, and honorable liability, and nothing but a loose construction of the clause in dispute will warrant it.

I therefore humbly pray your honors to hold these defendants to a strict construction of their contract; one in accordance with the manifest design of the parties, which is indemnity to these plaintiffs in case of damage or loss by fire.

and it is immaterial whether they owned equal shares or unequal shares, or one owned the whole, so long as they represented all the interests, and the entire loss was among them.

I am aware of the general rule of law, that a party insured, to recover his indemnity for loss, must have an insurable interest at the time of loss. And it follows, as a matter of course, that if the party insured has not this interest at the time of loss, somebody else has. Some other party beside the one insured has it—some stranger—some third party that the insurers know nothing of—never contemplated—never thought of when they entered into the contract. If the interest has passed from the insured to such third party or stranger, then of course the party has not the insurable interest at the time of loss and cannot recover.

Now let us apply this statement to the case at bar. Was the insurable interest at the time of the loss in the parties insured, or was it in some third party—some stranger whom the insurers did not know in the transaction—whom they never contemplated or thought of in the engagement which they made? Surely, in no stranger or third party, in no one outside of, or except the very parties whom the insurers agreed to insure and indemnify, no third party or stranger was there.

But it is said in reply, all the parties included in the indemnity were not there. All were not equally interested in the property; indeed *all* were not interested *at all*. Does that make any difference?

No others beside the parties insured possessed the insurable interest at the time of the loss. And does it matter how much of this insurable interest was represented by Mr. Dix, or Mr. Sinclair, or Mr. Harris; exactly how much of the property destroyed was owned by either one or the other—or whether one or all owned the whole.

The insurers insured these parties as *copartners;* they insured three men, to be sure, but really as one man—the three men combined in one firm—a *trinity* in *unity*. At the time of making these policies, the insurers did not pause to enquire how much of the insurable interest was owned by this, that or the other copartner; whether one owned eight-tenths, and each of the others one-tenth, or any other proportions. Neither did they pause to enquire what changes of interest among themselves might ensue in the course of their business; whether or not one of the partners might be a larger proprietor of the property insured than the others—or whether one might not indeed absorb the entire interest of the others, and become absolutely sole owner. And immaterial was it to them whether either or all owned the property insured at the time of the loss.

FIRST POINT.

Independent of the clause in question, the plaintiffs' right of action in their three names would be plain.

(1.) The contract having been made with three copartners, any action brought upon it must be in the names of them all, notwithstanding a transfer of the property or the policies. Nothing but the death of a partner could take a case out of this general rule of the common law.

Had the policies provided for a transfer of the property insured by and with the consent of the insurers, as they do provide for a transfer of the policies, the transferees of the property, as well as the transferees of the policies, to maintain an action for loss, must bring their suit in the names of the parties to the contract. The policies are not negotiable by assignment, nor does a transfer of the property impart any negotiability to the policies, so as to enable the assignees to sue in their own names.

It is immaterial therefore who owns the policies, or the property covered by the same, if a suit is maintainable at all, it must be in the names of the original parties to the contract.

I do not suppose this point is sought to be controverted, and it is so well settled in law, that I will cite but a single case—Jessels vs. The Williamsburgh Ins. Co., 3 Hill, 88.

(2.) The instances in the books, where the right of an assignee to sue in his own name has been sanctioned, are special and exceptional, viz: Marine Insurance cases, on the principle that the contract is maritime and does not fall within the Common Law.

1 Phillips on Insurance, section 76, 3d edition, page 57.

Actions brought in States like New York and Ohio, since they have adopted the modern code of procedure, requiring the plaintiff in interest to be plaintiff of record in all cases; and actions against companies whose charters provide that the assignee may have a personal right of action, as if he were the original party insured.

3 Denio, 254, 256; Conover vs. Mutual Ins. Co. of Albany. The charter being found in Session Laws of New York, 1836, page 314; idem page 42 and seq.; id. p. 44, sections 7, 8, 9.

Granger vs. Howard Ins. Co., 5 Wendell, 200, 203.

1 Comstock, 290, S. C.

Mann vs. Herkimer County Mutual Ins. Co., 4 Hill, 187.

2 Duer on Insurance, 51, note b.

(3.) So far as an insurable interest at the time of the loss is requisite, the plaintiffs had the proper interest. No stranger owned the goods or any share in them. All the interest in the goods was in the plaintiffs;

year, for $3,000, and one policy on the 8th December, 1856, for three months, for $2,000. The Mercantile Insurance Company, one policy on the 27th day of September, 1856, for one year, for $2,000, and another policy on the 8th of December, 1856, for three months, for $3,000.

In February, 1857, the plaintiff Sinclair sold out his interest in the goods to his co-partners, Dix and Harris. In March, 1857, the goods were destroyed by fire.

The defendants, by demurrer to the declaration, seek to defend on the ground of an alleged forfeiture of the policies by reason of such sale, under a clause in the policies in these words:

"In case of any transfer or change of title in the property insured by this company, or of any individual interest therein, such insurance shall be void and cease." The Court below sustained the demurrer, which is the error assigned.

Such is a statement of the actions brought on these policies, and the defense thereto. Upon this statement alone, were we to go no further, I think the Court would be with the plaintiffs. Indeed I doubt whether any lawyer, any business man, any man of sense, hearing simply the statement of the cases and the defense thereto, would hesitate to say the plaintiffs *ought* to recover.

The defense is purely a technical one. The condition or clause of the policies on which this defense is based, is without its reason in its application to these cases. The reason on which the clause or condition is founded, manifestly is to prevent parties insured, from transferring their policies or the property insured to *strangers*, and thus introducing into the care and management of the property, parties not known to the insurers.

In the cases at bar, the parties remaining in the care and custody of the property after the transfer of the interest of one of the parties to the others, are parties recognised and known in the contract of insurance. I say then, at first blush, upon a mere statement of the cases, every one, it seems to me, would naturally take sides with the plaintiffs, and unless it can be made to appear that the law is clearly, uniformly and very generally throughout this country, established against the right of the plaintiffs to recover, this honorable Court will not relinquish those first impressions that I assume them to have, and decide this question contrary to every man's good sense of the equity of the case.

The question is a new one in this State, and upon a careful examination of the authorities, it can hardly be said to be settled in other States, unless it may be in the State of New York, and here we contend the current of authority is with the plaintiffs.

Supreme Court, State of Illinois.

ERROR TO THE CIRCUIT COURT

IN AND FOR THE

COUNTY OF COOK.

DIX, SINCLAIR AND HARRIS,
Plaintiffs in Error.
vs.
THE CHICAGO CITY INSURANCE COMPANY.
No. 68.

AND

THE SAME PLAINTIFFS,
vs.
THE MERCANTILE INSURANCE COMPANY.
No. 107.

STATEMENT.

These cases are precisely alike, except in the names of the parties, and they differ only in the names of the defendants. The same question (and there is but one question) is involved in both cases, and a discussion of this question is equally applicable to both cases.

These actions are brought upon Policies of insurance against loss or damage by Fire. The plaintiffs being co-partners and having a stock of goods at Chicago, the defendants received from them the premiums and issued policies to the plaintiffs as follows: The Chicago City Insurance Company one policy on the 27th day of September, 1856, for one

STATE OF ILLINOIS, SUPREME COURT, } ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the ..... Court of Cook County, before the Judge thereof, between Joel H. Dix, Horatio G. Sinclair & George F. Harris to the use of James E. Southworth Albert Shannon & Valores Southworth and Harvey Harrington Jr. plaintiffs and The Mercantile Insurance Company ..... defendant, it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs ..... as we are informed by their complaint ..... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of December in the Year of Our Lord one thousand eight hundred and fifty-eight.

S. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

[12731-5]

Joel H. Dixon & Mess
vs
The Mercantile Trust Co
Writ of Error

Filed Dec. 2. 1858
L. Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of Cook Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Joel H. Dix Horatio G. Sinclair & George J. Harris to the use of James E. Southworth Albert Shanson, Balcas Southworth and Harvey Harrington Jr. plaintiffs and The Mercantile Insurance Company defendant, it is said that manifest error hath intervened, to the injury of the said plaintiffs as we are informed by their complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Mercantile Insurance Company that said Company be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if said Company shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Mercantile Insurance Company notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of December in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight.

L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

(12121-53)

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Joel H. Dix & others
vs
The Mercantile Ins. Co.

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Filed Jan. 28 1859
L. Leland
Clerk

Sock & Dig Co
vs
The Mercantile
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} No 107

It is agreed that
this case may keep to the second
Call of the Docket

C Beasley
Defendant's
H Wirt
Plaintiff's Atty
Defs Attys

Case 107

Dist Ct Dist
Mass

vs

The Mercantile
Insurance Co

Stipulation

Filed Apl. 19. 1859
L. Leland Clk.

Sol A Day etal
v
The Chicago City
Insurance Co

No 68.

It is agreed that this
case may pass to the second call
of the Docket.

H J Waite
Defendants Atty
C Beckley
Pltffs Atty

Case No 68

Jas H Dix
Et al
vs
The Chicago
City Insurance
Co

Filed Apl. 19. 1859
Leland Clk.

In the Supreme Court of the State of Illinois.

JOEL H. DIX, HORATIO G. SINCLAIR and GEORGE G. HARRIS,

to the use of

JAMES E. SOUTHWORTH, ALBERT SLAWSON, VALOROUS SOUTHWORTH and HARVY HARRINGTON, JR., Appellants,

VS.

CHICAGO CITY INSURANCE COMPANY, Appellee.

DEFENDANT'S POINTS.

The declaration in this case sets forth in *hæc verba* the policy upon which the suit was brought, with the conditions annexed.

In the body of the policy is the following clause: "and "that this policy is made and accepted in reference to the "conditions hereto annexed, which are to be used and re- "sorted to, in order to explain the rights and obligations of "the parties hereto in all cases not herein specially provided "for."

In the conditions annexed to the policy is the following clause:

"And in case of any 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."

The declaration also alleges that on the 12th day of February, 1857, the interest of Sinclair, one of the three part-

ners, was sold and transferred to Dix and Harris, the other two, and that the loss for which this suit was brought, accrued on the 2d day of March, 1857.

The declaration no where alleges that the defendants assented to the sale of Sinclair to Dix & Harris. To this declaration the defendants demurred.

The simple question for adjudication then is—whether under this policy and the conditions annexed, the sale from Sinclair to Dix & Harris, without the consent of the company, voided the policy.

1. All the conditions annexed are part of the policy:—

The conditions annexed are to be used and resorted to, to explain the rights and obligations of the parties thereto; thereby legally adopting and embodying those conditions as a part of the contract, and that to the same effect as if they had been set forth in the policy.

Where the application for insurance is referred to in the policy as "forming a part of the policy," it is regarded as forming a part of the policy. Burritt vs. Saratoga Co. M. Ins. Co., 5 Hill, 188. Williams vs. N. E. Mutual Fire Ins. Co., 31 Maine, 224. In Murdock et al. vs. the Chenango Co. M. Ins. Co., 2 Comstock, 200, it was held by the Court of Appeals that a paper purporting to be conditions of insurance, if annexed to and delivered with a fire policy, is to be deemed *prima facie* a part of it, although the policy do not contain any express reference to such paper. The same had previously been held in the Supreme Court in the case of Roberts vs. Chenango Co. M. Ins. Co., 3 Hill, 501. The conditions of the last two cases were on the same sheet with the policy, but there was no express reference in the policy to the conditions annexed.

The cases of Sexton v. Montgomery Co. M. Ins. Co., 9 Barbour, 200, and Gates v. The Madison Co. Mutual Ins. Co., 1 Selden 469, are in point, but in said cases the policies made the conditions annexed a part thereof.

In Sheldon v. Hartford Fire Ins. Co., 22 Cowen, 235,

where the policy referred to the survey in these words: "Reference is had to survey No. 83 on file at the office of the Protection Insurance Company," and the survey consisted of answers of questions, some of which were intended to draw forth a minute description of the premises, and others to enable the insurer to estimate the risk, it was held that the reference to the survey was not merely for a full description, but for the purpose of incorporating all the survey into the policy. This position is sustained in Parsons' Mercantile Law, 406, Routledge v. Band, 1 H. Blackstone, 255. Williams v. North East Marine Fire Ins. Co., 31 Maine, 324. Duncan vs. Sun Fire Ins. Co., 6 Wendell, 488. In this last case, the language in the policy referring to the conditions, is identical with that of the policy at bar.

If these conditions are a part of the contract, then, from the language in which they are couched they must be considered technical conditions, and the right to recover depends upon the strict performance of them.

Parsons Mercantile Law, 497.

Egan vs. M. Ins. Co. of Albany, 5 Denio, 326.

Wood vs. Hartford Fire Ins. Co., 13 Conn., 533.

Farmers' Ins. Co. vs. Lyden, 16 Wend., 481.

Duncan vs. Sun Fire Ins. Co., 6 Wend., 488.

Stipulations in policies are considered express warranties, and it is not necessary that the circumstance or act warranted should be material to the risk.

Duncan vs. Sun Fire Ins. Co., 6 Wend., 488.

This policy then, was voided by the sale of Sinclair to Dix & Harris, contrary to the express stipulation contained in the condition referred to, and we might rest the case upon the decisions already cited.

It has however, been definitely settled that in cases like this, where there is an absolute conveyance of the interest of one of the joint-owners of the property insured, to the others, without the consent of the insurers, the policy is void.

Murdock vs. the Chenango Co. M. Ins. Co., 2 Comstock, 210.

The case of Tillou vs. Kingston Mutual Insurance Company, 1 Selden, 405, overruled the same case reported in 7 Barbour's Supreme Court Reports, and the sale of one joint owner was held to avoid the policy.

A dissolution of a partnership before loss, and a division of the goods so that each partner owned distinct portions, was held to be a violation of a condition against any transfer or change of title in the property insured.

Ovelin vs. Ætna Fire Ins. Co., 18 Missouri, 128.

The law then is well settled in our favor. On principle, it is difficult to see how it could have been held otherwise, for courts of law always in their construction of contracts (and insurance policies form no exception) give full effect to the intention of the parties.

Parsons' Mercantile Law, 494.

Haven vs. Gray, 12 Mass. 74.

McKum vs. Washington Ins. Co., 2 Wash. C. C. R. 89.

2. Insurance is a contract of *indemnity* against loss; and unless the insured has an interest in the subject of insurance at the time of the loss, he is not damnified, and cannot maintain an action upon the policy. A joint action on the policy in question, cannot be sustained unless each and all of the partners insured had a *legal* interest in the subject of insurance at the time of loss. In Murdock vs. the Chenango Mutual Ins. Co., a case exactly in point, the Court says, page 217, 2d Comstock: "In general the action on a contract "must be brought in the name of the party in whom the "*legal* interest in such contract is vested, 1 Chitty on Pl. 3. "The moment that Garratt sold all his interest in the prop- "erty insured, he ceased to have any interest in the contract "of insurance. And I have not been able to discover a sin- "gle case in which a person having no legal interest, has been "allowed to maintain an action at law alone or with others."

Tillon vs. Kingston Ins. Co., 1 Selden, 405.

Howard & Ryeman vs. Albany Ins. Co., 3 Denio, 301.

The demurrer is drawn to cover both points made by the

defence, to wit: 1. That by the terms of the contract of insurance as counted on in narr., it was rendered void in consequence of the assignment of interest in said narr. alleged. 2. That by the technical common law rules of pleading, the narr. showing one of the parties plaintiff to have no legal interest in the subject insured, and hence none in the contract of insurance, the plaintiffs are prevented from sustaining this action.

With an averment in the declaration that the assignment of interest had been made with the consent of the company, the last point could not be raised; hence the peculiar form of the demurrer which alleges the simple facts relied upon as showing the declaration to be insufficient.

In § 197 of Angell on Fire and Life Insurance, the words "shall be alienated by sale or otherwise, the policy shall "become void" are construed not to include the transfer of interest between partners, and the case of Tillou vs. Kingston Mutual Insurance Co., 7 Barbour Supreme Court Reports, is cited. That decision turns upon the construction of the word "alienation," and the court in its opinion expressly states, "It is not, I apprehend, every transfer of title which is to be deemed an alienation." Condition eleven of this policy reads not alienation, but "any transfer or change of title in the "property insured, or any transfer of any undivided interest "therein." Besides, the court in that opinion partly relies upon a waiver of the forfeiture. The same case was overruled on appeal in 1 Selden, 406, not as to the construction of the word alienation, but as to the conclusion of the inferior court that the ~~[illegible]~~ recover of all the parties insured could ~~be~~ ~~[illegible]~~ in the suit after the cessation of a joint interest in the property insured. And the principle recognized in the case of Murdock vs. The Chenango Mutual Ins. Co., 2 Comstock 210, was reaffirmed. The case of Howard and Ryeman vs. Albany Insurance Co., 3 Denio, 301, turns upon the same point. Bronson dissenting cites Reed vs. Cole, 3 Burr, 512, and Stetson vs. Mass. Ins. Co, 4 Mass., 330. Both the cases of the transfer of the property insured by one of the three partners to the other two; while this assignee of the policy with the consent of the insurers recovered the exact amount of his advances with interest to wit $2046,12½ on the ground that the assignment of the policy being prior to the sale the assignee's rights could not be affected thereby. In that case the assignment of the policy before loss with the consent of the insurers created a new liability which could not be changed by the act of the original parties insured. In the case at bar the sale of Sinclair rendered void the policy before the rights of third parties commenced and destroyed the insurable interest of Sinclair —

* In that case the judgment of the inferior court for the full amount of the loss sustained & insured against by the joint owners to wit $2687,12½ was modified so that the joint owners recovered nothing because

12121-cjf

cited by Bronson decide simply that where a single individual effects an insurance on certain property, he can transfer part of his interest, and recover for the balance, provided the contract for insurance contains nothing to the contrary. The declaration of the plaintiff contains no allegation that the firm of Dix, Sinclair & Harris were or are indebted in any sum whatever, so that it is apparent from the record that one of the plaintiffs had no insurable interest at the time of the loss alleged.

Condition eleven must be construed to be a warranty, and not a representation, unless the facts alleged therein cannot possibly, in the opinion of any man, have any relation to the risks insured against, since it is a part of said policy. Arnold on Insurance side paging, 580, 1 Phillips on Insurance, 389 and 390.

Applying this test laid down by both Phillips and Arnold, it cannot be denied but that the Company may, possibly, in granting this policy of Insurance, have regarded the honesty and carefulness of the particular partner who sold out, and on the strength of such honesty and carefulness assumed the risk thereby insured against.

MONROE & SPENCER, *Def'ts Att'ys.*

68-45156

Dix et al

v.

Chicago Ins. Co.

Appellees brief

Filed May 10. 1859

Ill.

Wm. O. Bryant & Co., Printers, 41 Nassau Street.

Supreme Court,

Error to the Circuit Court of Cook County

STATE OF ILLINOIS.

DIX, SINCLAIR and HARRIS, Plaintiffs in Error, *v.* THE CHICAGO CITY INSURANCE COMPANY.	Plaintiffs' Brief.
The same Plaintiffs, *v.* THE MERCANTILE INSURANCE COMPANY.	CHARLES TRACY, Of Counsel.

Cyrus Bentley Plaintiff's Atty

Statement.

These actions are brought upon policies of insurance against loss or damage by fire. The plaintiffs being copartners and having a stock of goods at Chicago, the defendants received from them the premiums, and issued policies to the plaintiffs for one year from 27th September, 1856. In February, 1857, the plaintiff Sinclair sold out his interest in the goods to his copartners Dix and Harris. In March, 1857, the goods were destroyed by fire.

The defendants, by demurrer to the declaration, seek to defend on the ground of an alleged forfeiture of the policies by reason of such sale, under a clause in the policies in these words: "In case of any 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."

POINTS.

II.

Independent of the clause in question, the plaintiffs' right of action, in their three names, would be plain.

(1.) The contract having been made with three copartners, any action brought upon it must be in the names of them all, notwithstanding a transfer of the property or the policies. Nothing but the death of a partner could take a case out of this general rule of the common law.

3 *Hill*, 88, *Jessels* v. *The Williamsburgh Insurance Co.*

(2.) The instances in the books where the right of an assignee to one in his own name has been sanctioned, are special and exceptional, viz.:

———Marine insurance cases, on the principle that the contract is maritime, and does not fall within the common law.

1 *Phillips on Insurance*, § 76, 3d ed., p. 57.

———Actions brought in States like New York and Ohio, since they have adopted the modern Code of Procedure, requiring the plaintiff in interest to be plaintiff of record in allcases; and

Actions against companies whose charters provide that the assignee may have a personal right of action as if he were the orignal party insured.

3 *Denio*, 254, 256; *Conover* v. *Mutual Ins. Co. of Albany. The charter being found in Session Laws of N. Y.*, 1836, *p.* 314, *id. p.* 42 *and seq.*, *id. p.* 44, §§ 7, 8, 9; 1 *Comstock*, 290, *S. C.*; 5 *Wendell*, 200, 203; *Granger* v. *Howard Insurance Co.*; 4 *Hill*, 187; *Mann* v. *Herkimer County Mutual Ins. Co.*; 2 *Duer on Insurance*, 51, *note b*.

(3.) So far as an insurable interest at the time of the loss is requisite, the plaintiffs had the proper interest. No stranger owned the goods or any share in them. All the interest in the goods was in the plaintiffs; and it is immaterial whether they owned equal shares or unequal shares, or one owned the whole, so long as they represented all the interests, and the entire loss was among them.

III.

The clause in question is to be construed strictly; and it must not be allowed to defeat the indemnity, which is the motive and main intent of the contract of insurance.

5 *Pickering*, 76, 80, *Lazarus* v. *Commonwealth Insurance Co.*
13 *id.*, 81, *S. C.*
3 *Fairfield*, 44, *Lane* v. *Maine Fire Ins. Co.*
1 *Phillps on Insurance*, § 124, 3*d Ed.*, *p.* 83.

IIII.

The sale and assignment by Sinclair to Dix and Harris was no breach of the policy, and did not avoid it.

(1.) The clause in the policy is intended to save the company from becoming insurers of strangers whom they have not named. The company determines upon certain persons whom it will be willing to have for owners during the risk, and by this clause means to guard against the imprudence or dishonesty of other persons who may become owners.

(2.) The company has no motive to require the ownership

among several joint owners to remain unchanged among themselves. They may be equal partners, or one may own ninety-nine per cent., and another only one per cent.; yet the company does not require these proportions to remain unaltered. One may transfer half or quarter or all of his share to another so long as no stranger is made an owner.

(3.) If this clause of the policy were construed liberally, it would render a policy void whenever several partners change their relative shares in a firm. For example, when A, owner of two-thirds of the capital, sells a fourth of his share to B, who previously held but one-third, although the firm continues as before, yet it is a transfer of an interest from one partner to another partner; and if courts would seek occasion to vitiate policies by construing forfeiture clauses liberally, such a transaction between partners would fall by the operation.

(4.) But the rule of strict construction of forfeiture clauses prevents such a result. The intention of the contracting parties, the motives governing their minds in the use of terms, the actual views they entertained—as well the assured who paid to be made secure, as the insurers who took the premium as the price of securing the indemnity—being looked at, the clause is at once seen to have no relation to mere dealings of co-partners *inter se*. "Transfer or change of title" is seen to mean a passing of title from persons named in the policy to persons not named therein, a transfer from the assured to others not assured, a change of title by change of persons holding title, shifting the title from old parties to new parties.

(5.) There is a propriety in having the insurance cease when goods are sold off to customers. That is strictly an *alienation*—the term often used in policies—being a transfer to a stranger. Thus every sale of goods

takes so much out of the risk, and the policy is framed to cover new purchases, by which the stock is supplied.

3 *Fairfield*, 44, *Lane* v. *Maine Fire Ins. Co.*

(6.) But in the case at bar there was no such alienation, nor any such transfer or change of title in the property, as the policy was meant or designed to prohibit. There was nothing done by which a new person became insured. Both Dix and Harris were satisfactory to the company, and the interest had not gone from their hands. The transfer was not more in fact than often occurs in a firm without the forms of a transfer, when the course of drawing out of and paying into the common fund by several partners has brought the affairs into such a state that the interest of one partner in the stock has doubled, and the interest of another has become reduced to nothing. Indeed it often happens that the buying out of one partner by another is a mere adjustment in form of what actually existed before by means of such reduction of a partner's share.

(7.) By strict construction of this forfeiture clause, all difficulties and absurdities are avoided, and the universal intention and understanding of parties dealing with insurance companies are sustained. Let transfer of title mean a transfer from the assured, not among them; let change of title mean a change from them, not among them. Then transfer and change of title, like the analogous term alienation, are words fully satisfied and exhausted. Their literal meaning is given to them, and by strict construction they must have no more.

(8.) This clause requires a strict construction for another reason, viz.: there is no provision for a transfer or change of title being consented to by the company, or the validity of the policy being preserved in such case by consent or endorsement.

The passage immediately before the alienation clause

concerns the policy not the property. It provides that the policy shall not be assigned without the consent of the company endorsed on it; and if the policy is assigned without such consent it shall become void. Thus, the transfer of the policy may be consented to, and it avoids the policy only when done without consent. But the following clause, forbidding the transfer of the property, has no qualification. The transfer or change of title to the property intended by this clause therefore, is such a transfer or change as would be inadmissible altogether; one for which no mode of consent is to be provided; in short, a transfer or change by which the title or a share of it leaves the persons insured and goes away to strangers.

(9.) The course of authority is clearly with the plaintiffs on this point.

Parson's Mercantile Law, 533, speaking of the effect of transfers of property insured:

"If many owners are insured in one policy, a transfer by one or more to strangers, without the act or concurrence of other owners, will avoid the policy for only so much as is thus transferred. And if it be transferred to one or more of the insured, it is, we think, no alienation, and makes no forfeiture."

Angell on Life and Fire Insurance, § 197, *p.* 233, states the distinction between a transfer between several persons jointly insured and a transfer to a stranger; in the former case, it is not an alienation nor a breach of the condition.

7 *Barbour*, 570, 575, 576, *Tillou* v. *Kingston Mutual Ins. Co.* (*An.* 1850.)
1 *Selden*, 405, *S. C.* (*An.* 1851.)

This was insurance on a building, and the several parties held as tenants in common, each holding an undivided share. The difference between that and an

insurance of partnership goods, where each partner has his right in the resulting balance of the firm's property and effects, rather than his specific share in each piece of goods, is obvious. The reversal of the judgment of the Supreme Court also was partial and not total. The judgment below was for $2,687 15, and it was only reduced on appeal to $2,146 52. (1 Selden, 408.) The reduction of the amount of recovery by a small per centage leaves the decision but little force as an authority, inasmuch as it was not a principal adjudication on the main point of the cause.

2 *Comstock*, 210, *Murdock* v. *The Chenango Mutual Ins. Co.* (*An.* 1849.)

This also is a case of insurance on a building, and subject to the peculiarities of a tenancy in common in the assurer.

3 *Denio*, 301, *Howard* v. *The Albany Ins. Co.* (*An.* 1846.)

In this case Judge Bronson had laid down a rule by which the partners Dix & Harris might, in their own names, recover for their original shares, but not for Sinclair's share. The property insured was partly real and partly personal.

But the whole subject was again brought under consideration in the New York Supreme Court, before Judges Roosevelt, Edmonds, Edwards and Mitchell, in 1853, in the following case:

16 *Barbour*, 511, *Wilson* v. *Genesee Mutual Ins Co.*

In this case two partners took insurance on their stock of goods. One sold out to the other. The Court considered the matter fully, and decided that such a transfer was not within the principle on which the prohibition of the policy was founded.

It will be observed that Judge Edmonds, who united in this decision, (16 Barb., 514, nt.,) had also been a judge in the Court of Appeals in the time of 1 Selden. (1 Seld., p. iii.)

This opinion was re-affirmed in the Supreme Court by Judges Welles, Strong and Smith, in 1857, in 23 *Barbour*, 623, 627, *Dey* v. *Poughkeepsie Mutual Ins. Co.* "If this assignment had simply been from one of the assured to the other, they being partners, it would not, for the reasons stated by Roosevelt, Justice, in Wilson *v.* The Genesee Mutual Insurance Company, (16 Barb., 511,) have affected the policy. But as it is, the company are called upon to litigate with a party with whom they had not contracted, and which their policy protected them against." Judge Welles, who delivered this opinion, was also in the Court of Appeals in 1 Selden. (1 Seld., p. iii.)

The case in 16 Barbour (An. 1853,) thus re-affirmed in 23 Barbour, (An. 1857,) is now the controlling authority on this subject. It is a case originally determined by four judges of the highest standing on questions of commercial law, and occupied with the business of the city of New York, and the ruling subsequently adopted by three other judges of distinction. The reasoning of Judge Roosevelt in the opinion (16 Barb., 512,) is unanswerable.

This rule is now deemed thoroughly established in the State of New York.

It is also seen above to be so laid down in the two best treatises on commercial law and fire insurance, viz., Parson's Mercantile Law and Angell on Insurance.

IV.

The defence made in this cause deserves no favor from the Court.

It is an unworthy attempt to escape from a fair liability by a perversion of terms used in the policy, giving them a sense which it is entirely certain the plaintiffs did not deem them to have. If the assured had construed this clause as the defence now does, they would have obtained other in-

surances on their goods; but correctly reasoning like merchants about a commercial contract, and following the usual understanding that a policy is intended as an indemnity and not as a snare, they reposed on these policies after making one of those changes in relative interests which are of common occurrence among copartners If there was even a pretence of fraud or unfairness set up by the defendants it would seem a less scandalous defence. The defendants have no such apology; they stand upon the bare ground of a forfeiture to be made out by a liberal construction of a clause in the policy; and they, therefore, can have no favor from the Court.

V.

(1.) But if the Court differ from us in the foregoing positions, and hold that the clause under consideration has been violated, it cannot be said to have been violated, except as to Sinclair's interest. His was the only interest transferred, and the words "*such insurance*" apply only to such property covered by the insurance, as has been transferred.

Parson's Mercantile Law, p. 533.

(2.) To say that this clause applies to partners in the same manner as to tenants in common, is to say that each partner's specific interest in the property is separately, particularly and specifically insured; and this is analogous to an insurance of different and specific pieces of property in the same policy. But, in the latter case, where one of the pieces of property has been alienated or transferred contrary to a condition of the policy of this kind, it has been held that the policy is avoided only *pro tanto*, as to the property transferred.

6 *Cushing*, 342, *Clark vs. The New England Mutual Fire Insurance Company.*

Hence, by analogy, one of these interests only having been transferred, the policy is avoided only *pro tanto*, as to the interest transferred.

(3.) Dix and Harris, not having alienated, have a remaining insurable interest at the time of the loss, which entitled them to recover *pro tanto.*

3 *Burrows*, 1512, *Reed vs. Cole.*
4 *Mass.* 330, *Stetson vs. The Mass. Ins. Co.*
16 *Wend.* 385, *Ætna Fire Ins. Co. vs. Tylor.*

(4.) Where a condition of the policy is broken, the consequence of which is to avoid the policy, it only avoids it as to that, or so much of the property insured as is obnoxious to the breach.

7 *Hill*, 122, *Trench and another vs. The Chenango Co. Mut. Ins. Co*

In this case there was a condition that applications should be in writing, and if *any* misrepresentation or concealment should be made, "such insurance shall be void and of no effect" (almost the identical words used in the clause in question). Yet, it was held that as the concealment or misrepresentation which constituted the violation in that case was only as to a part of the property insured, the policy ceased only as to that part.

So in the case at bar, Dix, Sinclair and Harris being insured on their respective separate and specific interests in the property insured, like tenants in common, as contended by the defendants, and the clause of the policy being violated only as to the separate interest of Sinclair, the interest of Dix and Harris remaining the same, the policy is only avoided as to Sinclair's interest, and Dix and Harris should recover.

(5.) If Dix and Harris alone are entitled to bring suit, the Court will allow us to amend, by striking out the name of Sinclair, and altering the declaration in conformity thereto.

Cyrus Bentley
Plaintiffs atty.

Case No 68 - 185

Joel H. Dix et al

vs

The Chicago City Insurance Co.

Filed May 12: 1859
L. Leland
Clerk

SUPREME COURT.

STATE OF ILLINOIS.

JOHN H. DIX, ET AL
vs.
~~MERCANTILE~~ INSURANCE CO.

City

DEFENDANT'S BRIEF.

This is an action of Assumpsit, on a policy of Insurance. The defendant demurred to the plaintiffs' declaration, and the Court below sustained the demurrer, which is the error assigned.

We say the demurrer was properly sustained. The policy of Insurance was issued to Joel H. Dix, Horatio G. Sinclair, and George J. Harris, composing the firm of Dix, Sinclair & Harris, on a stock of groceries. The declaration contains these words: That the said plaintiffs, at the time of making the said policy of Insurance, and from thence until the 12th day of February, A. D. 1857, were interested jointly as co-partners in said insured stock of groceries, to the amount or value of all the moneys by them ever insured, or caused to be insured thereon; that on the said last mentioned day, the interest of said Sinclair therein *was sold and transferred* to said Dix and Harris, and that from the said last mentioned day, until the loss and damage hereinafter mentioned, the said plaintiffs, Dix & Harris, were jointly interested therein, to the amount or value aforesaid, to wit: On the second day of march, A. D. 1857, to wit, at the County aforesaid, was burnt, consumed and destroyed by fire."

By the declaration itself it appears that the policy was made upon, and accepted subject to, the following conditions:

"Policies of Insurance subscribed by this Company shall not be assignable without the consent of the Company, expressed by endorsement 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 henceforth cease; and in case of any transfer or

change of title in the property insured by this Company or any undivided interest therein, such insurance shall be void and cease."

The grounds of the demurrer was "the sale and transfer" by Sinclair, of his interest before the fire, in the goods to Dix & Harris.

The language of the conditions is as broad and comprehensive as human language can be, and it will be impossible, by any process of reasoning, to show that it does not meet and cover this very case. The loss complained of, occurred after the *sale* and *transfer*. The declaration avers, that there was a "*sale and transfer*," and it is not pretended or averred that it was done by the assent of the defendants.

We cannot see how the action can be sustained, on principle. Has there not been a change and transfer of title, or of an undivided interest therein? The policy says, a transfer or change of title, in the property insured. The declaration avers, that Sinclair sold and transferred his interest in the insured property. Did not that change the title? Before, it was *Dix, Sinclair & Harris*. It changed the title to Dix & Harris. The title was in different persons, from what it was when the property was insured. But the plaintiffs seek to escape this by saying one partner has a right to sell out to the others. But does it make it any the less a change of title? Is it any less a transfer of title? The language is, a sale and transfer. How could Dix & Harris become possessed of the title without a sale or transfer? The declaration avers that there was a sale and transfer. But the matter is placed beyond a question by the balance of the restriction—*or of an undivided interest therein*. There has been a change of title to an undivided interest in the insured property. You may put ever so strict a construction on the language used, and it will meet this case.

This provision is binding upon the parties. This is conceded by the plaintiffs in error; but they say, the language does not mean a sale and transfer from one partner to the others; that some peculiar rule of construction is to be applied to the words in question. We understand language used in a policy of Insurance is to have no forced meaning, but to be considered as used in the ordinary and popular acceptation; and the same as any other mercantile contract.—Arnold's Ins. Vol. I., Page 63, Sec. 41. Robertson vs. French, 4 East R. 135. 16 Peters, R. 496.

The language here used is not ambiguous, or obscure, nor technical; and how any one can claim that it does not cover the case at bar, is incomprehensible. It can only be accounted for upon the necessities of the case.

We have thus far treated this question as if it had not been decided. How is it on authority? The clause in question is valid. 5 Hill R. 188. 3 Hill R. 503. 4 New Hampr. R. 171. 31 Maine R. 224. 2 Conn. R. 200. 6 Wend. R. 488 5 Denio R. 326. 16 Peters, 496. 4 Ohio State R. 285.

"The policy was 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 otherwise especially provided for," which made condition Number 7 a part and parcel of the policy. 5 Hill R. 190 1 H. Black R. 254. 1 Term R. 710. 3 Hill R. 501. 2 Com. R 200. 31 Maine R. 224. 6 Wend. R. 488. 8 Black R. 50, 150. 2nd Ind. 645. 4 Ohio State R. 285.

Contracting parties have a right to enter into any stipulation not contrary to public policy or positive law—and Courts will enforce them—and the contracts of Companies and Corporations form no exception to this rule.

In construing policies, as in all other contracts, the intentions of the parties as expressed must govern. Parsons on Contracts 494.

12 Mass. R. 74.
2 Wash. C. C. R. 712.
5 Cowen 712. 3 Cowen R. 210.
16 Peters R. 496.

Both these positions are conceded by the plaintiffs in error, but whether conceded or not, they are clearly established by the authorities.

The sale and transfer by Sinclair, to Dix & Harris, by authority as well as principle, avoided the policy, and the plaintiffs cannot recover.

Murdock vs. Chenango Insurance Co., 2nd Com. R. 210,
Fellow vs. Kington 1 Seld. R. 405.
16 Peters R. 496. 5 Denio R. 32 6.
3 Denio R. 302. 4 Seld. R. 299.
18 Missouri R. 128. 30 Penn. State R. 311.

The cases in Missouri and Pennsylvania recognize the cases we have cited from the Court of Appeals in the State of New York as law, and were both the cases of partners.

Dix, Sinclair & Harris had no joint interest in the property insured; that joint interest had been destroyed by the sale and transfer from Sinclair to Harris & Dix, an act in which all three concurred. An action cannot be maintained in the name of Dix, Sinclair & Harris, when Sinclair has no interest in the suit, or title in the property destroyed.

1 Chitty's Pleading, 3. 2nd Com. R. 217. 3 Denio R. 301.

It is fatal to this action, that the declaration discloses that Dix, Sinclair & Harris, the plaintiffs, had no joint interest in the property insured at the time of the loss. The joinder of him with Dix & Harris is fatal. 4 Com. R. 216. 4 Hill R. 187. 5 Wend 200, 203. 1 Hill 71. 3 Denio R. 303.

It is made a condition precedent to the plaintiffs' right to recover, that they all should continue to own the goods. It is a special contract, and the party can only recover upon the special contract, when they have

fulfilled all the conditions thereof on their part to be kept and performed. This principle is not alone applicable to contracts of insurance, but to every other special contract. This action is brought upon the special contract. 5 Denio R. 326.

This condition being part of the policy or contract, though they may be considered technical conditions, the plaintiffs' right to recover depends upon their showing in the declaration a strict performance of them. Parsons on Contracts 497. 13 Conn R. 533. 5 Denio R. 323. 16 Wend. R. 481. 5 Denio R. 326.

REMARKS ON THE ARGUMENT OF THE PLAINTIFFS IN ERROR.

The plaintiffs in error rely mainly on the case of Wilson vs. Genesee Ins. Co, 16 Bar. R. 511. We say it is not to be received as law in this case.

1. Because it is not the law of the State of New York. It is placing the opinion of an inferior Court against a superior Court.

2. We are to look to the highest tribunal in the State, for the law of the State, and that tribunal decides the question with us.

3. Barbour's Reports are not deemed authority. You can find in them any kind of law to meet any case. I would as soon think of citing the decision of a justice of the peace, as settling the law of Illinois, when the Supreme Court had decided otherwise, as to cite Barbour as overruling the Court of Appeals.

4. That case does not present the strange anomaly of a party suing for what, on the record, he admits he had no interest; it is brought in the name of the assignee.

5. Because there is no sense or logic in the reasons given by the Court for his conclusions.

6. If there was reason to support the case, it is not authority on the question at bar; because the restriction is on the assignment of the interest of the insured therein. Hence the words are still more restrictive, and embrace the sale and transfer of an undivided interest.

7. The decision is contrary to the law as established by the highest tribunal of the State of New York, Pennsylvania and Missouri.

8. There is a similar decision in Fellow vs. Kington, 7 Bar. R. 574, with similar reasoning, which is overruled in 1 Selden R. 405, which is made after the case in the Comstock Reports.

9. In 16 Barbour, the fully authorized agent of the Insurance company was notified of the transfer, and assented to it, and told them that no assent of the Company in writing was required. The Court gave a very poor reason for deciding as they did.

10. The Court deciding the case in Barbour, seems to have so little regard to the cases in the Court of Appeals, that they did not deign to

notice them. From this we may infer, either that they did not know of the case, or, secondly, they considered themselves superior to the Court of Appeals.

11. The case concedes that the action, if brought in the name of a party not interested, as in the case at bar, it would be fatal.

12. The Court cannot state, that they have agreed, in effect, that one partner might sell to another; they have agreed to no such thing. It is engrafting upon the policy, a provision which is not in it. You are compelled to add to the language used. I can best dispose of the whole case, and all the argument of the plaintiffs in error, by citing the language used in the 30 Penn. R. 311, which was a sale by one partner to another partner, like the case at bar. Says the Court:

"*It was against alienation the prohibition was hurled, and the mere use of terms will not defeat the intent. That a sale by one partner to another is within the prohibition cannot be doubted; there is no exception in its favor, in the instrument, and the terms used give no room to imply any. This is a legitimate consequence of sale and purchase, and no substitution of terms will make it anything else.*"

Again, in 18 Missouri R. 133, which was an action on a policy of insurance on a stock of goods, in favor of two partners, Deher & Brunt. The Court instructed the jury:—

"If they find, from the evidence, that prior to the fire, Brunt had sold out to Deher all his interest in the stock of goods in the Broadway store, and that, at the time of said fire, Brunt had no interest in said stock of goods, they will find for the defendant."

It is admitted,—nay, it is alleged in the declaration in this case—that there had been a sale and transfer.

They also, in the case in 23 Barbour 623 as affirming 16 Bar. the question only incidentally came before the Court; and if reason has anything to do with the question at bar, the reasoning of the Court in the 23 Barbour is conclusive upon the case before us.

13. The plaintiffs in error also rely upon Angel on Insurance, and Parson's Mercantile Insurance. These works rely upon 6 Barbour, overruled in Selden, and are not authority, for the reasons in bar given above.

14. Parties might be willing to insure Dix, Sinclair & Harris, and not Dix & Harris. They might have confidence is the one, and not in the others. It was their right to make such a contract to insure or not insure the property, and it was the plaintiffs' duty to notify them of the change of title, and get their assent thereto; and it was their privilege to assent or dissent.

15. They cannot claim any favor on the ground of ignorantly violating the terms of the policy, for there is no pretence that they did so ignorantly; even ignorance is no excuse.

Handy's Reports.

In the conclusion of the argument, it is said, this defence deserves no favor. To answer I quote the Sylabus of 16 Peters, R. 496, which is in these words :

" The public have an interest in maintaining the validity of the clauses in a policy of insurance against fire. They have a tendency to keep premiums down to the lowest rates, and uphold institutions of this sort, so essential to the present state of the country, for the protection of the vast interest embarked in manufactures and merchandise." 16 Peters R. 496 Syl.

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68-156

John Dry Dock

vs

City Ordinance

Co

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Points by two
days in Error

Filed May 10, 1849.

L. Leland
Clerk