No. 13685

Supreme Court of Illinois

Hadden

vs.

Hartford Ins.Co.

71641

STATE OF ILLINOIS.

SUPREME COURT,

Third Grand Division.

No. 252.

Hardin
vs
Hartford
Fire Ins Co
1885
Error

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

THE HARTFORD FIRE INS. CO.,
Appellants,
vs.
GEORGE M. HADDEN,
Appellee.

Appeal from the Court of Common Pleas of the City of Aurora.

ABSTRACT OF RECORD.

3 Feb. 22d, 1861, summons issued, directed to Sheriff of Kane county, commanding him to summon The Hartford Fire Insurance Company to appear before the Court of Common Pleas of the City of Aurora, at the March Term, A. D. 1861, to answer George M. Hadden in assumpsit.
4 Served Feb. 22d, 1861.

March 9th, 1861, plaintiff filed his declaration, containing two special
5 counts on Fire Insurance Policy, and count stated.

The first count stated the defendants, August 14th, 1860, made a policy of fire insurance whereby, for $15, they insured him against loss by fire for $1,500, for two years, on his mortgage interest in two wooden dwelling houses, owned by D. W. Young, of Aurora, Illinois, situated on lots No. one and three of the original town of Aurora.

6 And it was further agreed by said parties, in case of loss, the plaintiff should assign to defendants an interest in said mortgage to the sum of the loss paid.

The second count states, August 14th, 1860, the plaintiff was *interest-*
28 *ed as mortgagee* in the two wooden dwelling houses *owned* by one D. W.

Young, of Aurora, Illinois, situated on lots No. one and three of the original town of Aurora, to the value and amount of $1,500, and so continued interested until the destruction of the property; and the defendants, for a premium in money then paid, made a policy of insurance upon the plaintiff's interest as mortgagee, as aforesaid, and thereby promised the plaintiff to insure $1,500 thereon, from August 14, 1860, to August 14, 1862, against all such immediate loss as should happen to said dwelling houses by fire; and,

March 22d, 1861, the defendants filed the general issue of *non-assumpsit*, and three special ~~counts~~ pleas

~~109~~

The first special plea as to $345 of the said $1,500, mentioned in plaintiff's declaration; alleges that before making the said policy, to wit: March 5th, 1859, at the city of Aurora, Illinois, it was corruptly agreed between the plaintiff and one D. W. Young that the plaintiff should lend to him $1,500, and that the plaintiff should forbear the payment thereof for two years from said March 5th, 1859; and for such forbearance, Young should pay to plaintiff interest at twenty-five per cent. per annum on the $1,500, making $750 usurious interest; and to secure the repayment of the $1,500, and said interest money, Young should execute to plaintiff a judgment note for the $1,500, payable two years from said March 5th, 1859, with interest at ten per cent. per annum, payable semi-annually; and for the securing the balance of said interest money, that is to say, $450 thereof, D. W. Young should execute to plaintiff his (Young's note) four several judgment notes, each for the sum of $112.50, and to become due respectively in six months, one year, eighteen months, and two years after their respective dates, with interest at ten per cent. per annum after due; and that also, for further securing the repayment of the $1,500, as specified in the first of above named notes, the said D. W. Young and his wife should execute to plaintiff the mortgage mentioned in the declaration.

~~110~~

The defendants aver that, in pursuance and in part performance of the corrupt agreement, Young afterwards, March 5th, 1859, at Aurora aforesaid, executed to plaintiff the first mentioned judgment note for 1,500 dollars, payable two years from said 5th March, 1859, and also then executed to plaintiff the last mentioned four judgment notes, each for 112 dollars and 50 cents, and payable respectively as above stated.

And said Young ~~and his wife~~ did deliver the judgments to plaintiff on said terms, and the defendants aver that in further performance of the corrupt agreement, the said Young and wife did, March 5th, 1859, execute to the plaintiff the mortgage aforesaid; and in further performance of the corrupt agreement the plaintiff on the same day lent Young 1,500 dollars; and defendants aver that said rate of 25 per cent. exceeds ten per cent., contrary to the statute.

~~111~~

And defendants aver, Sept. 21st, 1859, Young paid to plaintiff on the said unlawful interest 100 dollars.

And defendants aver, that January 14, 1860, Young paid to plaintiff
40 on the said unlawful interest 10 dollars.

And defendants aver, that July 23d, 1860, Young paid to plaintiff on said unlawful interest 160 dollars.

And defendants aver, that on the 11th day of October, 1860, Young paid to plaintiff on said unlawful interest 75 dollars, making in all the said sum of 345 dollars.

Whereby and by force of the statute in such case made and provided the plaintiff became liable to forfeit the whole of said interest money so, contracted, to be received by him from the said Young, and that the defendants have the right to have the said 345 dollars, so paid, as aforesaid, on the unlawful interest applied to the payment and discharge so far of the said 1,500 dollars so lent and advanced. Wherefore they pray
41 judgment whether the plaintiff ought to have and maintain his aforesaid action against them as to the 345 dollars of the said 1,500, which was paid as aforesaid.

The second special count states as to so much of the $1,155 (which is the balance of the $1,500, after deducting therefrom the 345 dollars mentioned in second plea) as shall be equal to the amount that shall be due on the *four interest* notes mentioned in this second special plea, *actio non*, because they say that before the making of the policy of insurance on the 5th day of March, 1859, at Aurora, Illinois, it was corruptly agreed between the plaintiff and the said Young, that he should lend to
42 Young 1,500 dollars, and that the plaintiff should forbear the day of payment thereof, from said March 5th, 1859, for two years, and for such forbearance the said Young should pay to plaintiff 25 per cent. per annum of the $1,500, making the whole amount of such unlawful interest 750 dollars; and to secure the repayment of the 1,500 dollars and the 750 dollars, Young should execute to the plaintiff his note for the $1,500, payable two years from March 5th, 1859, with interest at ten per cent., payable semi-annually, and his four several notes for the 450 dollars, the balance of said unlawful interest, each note being for 112 dollars and fifty cents, payable respectively in six months, one year, eighteen months, and two years after their respective dates, with interest at ten per cent. after due; and for the further securing the repayment of the said 1,500
43 dollars and the ten per cent. interest thereon, as specified in said 1,500 dollar note, the said Young and his wife should execute to the plaintiff the mortgage mentioned in declaration.

The defendants aver, that in part performance of said corrupt agreement, Young, March 5th, 1859, executed to the plaintiff his note for $1,500, aforesaid payable two years after date, with interest at ten per cent., payable semi-annually, and then executed to the plaintiff the four
44 several notes for the 450 dollars, balance of the unlawful interest, each of the four notes being 112 dollars and 50 cents, and payable in six months one year, eighteen months, and two years after their respective dates, and drawing interest at ten per cent. after due.

The defendants further aver, that in pursuance and in further part performance of said corrupt agreement, Young did then deliver the whole of said notes to the plaintiff, on the terms and for the purpose aforesaid.

The defendants aver, that in pursuance and in further part performance of the corrupt agreement, Young and wife did then execute to the plaintiff the mortgage mentioned in plaintiff's declaration.

The plaintiff, in further performance of the corrupt agreement, March
45 5th, 1859, did lend to Young 1,500 dollars.

The defendants aver said rate of 25 per cent. interest on the 1,500 dollars exceeds ten per cent., contrary to the statute, &c.

The defendants aver the said four notes, given for the 450 dollars, part of said unlawful interest and negotiable by the law merchant and the statute, whereby, and by force of the statute, the plaintiff has become liable to forfeit the whole of the said unlawful interest money, so contracted, to be received by him from Young, and that the defendants have the right to have the whole amount of the said four interest notes applied as the part payment and discharge so far of the said 1,155 dollars balance, as aforesaid, of the said sum so lent.

Wherefore, they pray judgment whether the plaintiff ought to have or maintain his aforesaid action against them as to the amount of said four notes.

46 The third special count states, as to $335 of the 1,500 dollars mentioned in the declaration of the plaintiff, say *actio non;* because, they say, that before the making of said policy of insurance, to wit: March 5th, 1859, at Aurora, Illinois, it was corruptly agreed between the plaintiff and the said Young, that the plaintiff should lend to Young 1,500 dollars, and that he should forbear the payment of the $1,500 from March 5th, 1859, for two years; and for such forbearance Young should pay the plaintiff, on the 1,500 dollars, twenty-five per cent. per annum, making the whole sum of unlawful interest 750 dollars. And to secure
47 the repayment of the 1,500 dollars and said unlawful interest, Young should execute his note for 1,500 dollars, payable two years from that date, with interest at ten per cent., payable semi-annually, and should execute his four several notes for the 450 dollars, balance of the said unlawful interest, each note for 112.50 dollars, and payable respectively in six months, one year, eighteen months, and two years from their respective dates, with interest at ten per cent.

And to further secure the repayment of the 1,500 dollar note and the interest thereon, Young and his wife should execute to the plaintiff the
48 mortgage mentioned in plaintiff's declaration.

The defendants aver, that in pursuance and part performance of said corrupt agreement, March 5th, 1859, Young did execute and deliver to the plaintiff the said notes, on the terms and for the purpose aforesaid.

And the defendants aver, that March 5th, 1859, Young and wife, in pursuance of said corrupt agreement, executed to the plaintiff the mortgage mentioned in the declaration, on the terms and for the purposes aforesaid.

The defendants aver that the 25 per cent. per annum exceeds the lawful rate of interest, contrary to the statute, &c.

50 The defendants aver, that Sept. 21st, 1859, Young paid to plaintiff, on the said unlawful interest, 100 dollars.

The defendants aver, that July 23d, 1860, Young paid the plaintiff on the unlawful interest 160 dollars.

The defendants aver, that October 11th, 1860, Young paid the plaintiff on said unlawful interest 75 dollars, making in all the sum of 335 dollars, which the said Young paid the plaintiff on said unlawful interest. The defendants claim in this plea that the plaintiff has become liable to forfeit the whole of the said unlawful interest, and that the defendants have the right to have said 335 dollars, so paid as aforesaid on the said unlawful interest, applied to the part payment and discharge of the said 1,500 dollars. Wherefore they pray judgment whether the plaintiff ought to have or maintain his aforesaid action against them as to the 335 dollars of the said 1,500 dollars, which was paid as aforesaid; which pleas were filed March 22d, 1861.

March 23d, 1861, the plaintiff entered his demurrer to each of the said
52 special pleas; and the defendants join in the demurrer; and the Court not being fully advised, takes time to consider.

March 30th, 1861, being the March term of said Court, the parties waive jury in the cause, and submit the cause to the Court for trial, to be taken up at a future day.

April 1st, 1861, at same term of said Court, the demurrers to said pleas coming on to be heard and the Court being fully advised, sustains the demurrer. Therefore it was considered by the Court that the plaintiff have and recover of the defendants his costs and charges by him about this demurrer expended, and have execution therefor. To which decision of the Court in sustaining said demurrer, the defendant at the
54 time excepted.

April 3d, 1861, one of the Court days of said term, this cause having been submitted to the Court for trial, and the Court having heard the evidence adduced and not being fully advised by consent of the respective parties made in open Court, the Court takes the same under advisement until Saturday at 2 o'clock P. M., the judgment of the Court to entered as of the present term and with the same rights to either party, and with the same force and effect as if entered in Term time.

April 13th, 1861, (entered as per agreement of counsel and order of the Court as of the March Term, A. D. 1861,) the following proceedings were had in this cause and entered of record: The Court being fully advised, finds the issue joined in favor of the plaintiff and assesses his
56 damages to the sum of 1,520.50 dollars, for which judgment was rendered by the Court. To which decision of the Court the defendants at the time excepted, and prayed an appeal to the Supreme Court of the State of Illinois. It is ordered by the Court that the appeal be allowed on defendants entering into bonds in 2,000 dollars, with Ira A. W. Buck as surety; that the defendants have thirty days to file their bill of exceptions, and thirty days to file their bond.

77 May 13th, 1861, appeal bond was filed, properly executed.

58 May 13th, 1861, the defendants filed their bill of exceptions.

The plaintiff, to maintain the issue joined on the trial on his part, offered to introduce a policy of insurance, executed by the defendants to the plaintiff, dated August 14, 1860, which is set out in the bill of exceptions in words and figures. The defendants, for 15 dollars paid to them by the plaintiff, insured him against loss or damage by fire to the
59 amount of 1,500 dollars, for two years, on his *mortgage interest* in the two wooden dwelling houses, owned by D. W. Young, situated on lots one and three original town of Aurora; that it was expressly agreed, in case of loss, the plaintiff shall assign to the defendants an *interest* in said mortgage to the sum of the loss paid. The defendants, for the said 15 dollars, promised and agreed to make good to the assured (the plaintiff) all such immediate loss or damage, (not exceeding in amount the sum insured,) as shall happen by fire to the property from August 14th, 1860, (at noon,) to August 14th, 1862, (at noon,) said loss or damage to be estimated according to true and actual cash value of the property at the time shall happen, and to be paid in sixty days after notice and proof thereof,
60 the same made by the assured at the office of the defendants in conformity to the condition annexed to the policy.

The balance of the policy contains the usual provisions—conditions of insurance and classes of hazards.

60 To which the defendants then and there objected, because of variance between the instrument declared on and the one offered to be introduced in evidence, as aforesaid, which objections the Court overruled, and allowed the plaintiff to read the same in evidence under the second count in the declaration; to which decision of the said Court the defendants then and there excepted. The execution of the policy by the defendants was admitted by the defendants' counsel.

The plaintiff offered to introduce in evidence a certain mortgage, executed and acknowledged by Delos W. Young and his wife, and note signed by Young, dated March 5th, 1859, which mortgage and note are set out in their words and figures in the bill of exceptions.

Said Delos W. Young and wife thereby mortgaged to the plaintiff
81 certain real estate to secure the payment of said note. The real estate in the mortgage, was and is described as a lot, piece or parcel of land, situated in Kane county, Illinois, and in the City of Aurora, and are lots one, two, and three, in Block fourteen, as recorded in the Recorder's
83 office of Kane county, Illinois. To have and to hold the same, &c.
84 The balance of the mortgage is in the usual form, with a power of sale.

85 The note mentioned in and secured by said mortgage was dated March 5th, 1859, and given by Delos W. Young for 1,500 dollars, and due two years from its date and payable to the plaintiff, and drawing interest at
87 ten per cent. per annum, payable semi-annually. To which the defendant then and there objected, because of the variance between the description of the premises contained in the mortgage and the description of the premises contained in either count in the declaration, and also
88 because the description in the mortgage was uncertain and ambigous, and that the said mortgage was otherwise incompetent and irrevelant evidence; but the Court, after hearing the testimony of Delos W. Young and Ira A. W. Buck, hereinafter stated, overruled the said objections and admitted the evidence so offered.

To which decision of the Court the defendants then and there excepted. Execution of the mortgage by said Young and his wife and the note by said Young, was admitted by the defendants' counsel.

The plaintiff then called *Delos W. Young*, who testified that the said mortgage covered the lot upon which his house stood which was burned November 5th, 1860, which house stood on lot one (1) in Block fourteen, (14) in the original town of Aurora. To which testimony the defendants objected. But the Court overruled the objections, and admited the evidence. To which decision of the Court the defendants then and there excepted.

The plaintiff called *Ira A. W. Buck*, who testified that the said mortgage was the mortgage interest in said houses, which were insured by the defendants in the said policy, and that the house which was burned
89 was one of the houses so insured. To which evidence the defendants objected. But the Court overruled the objection, and it was admitted by the Court. To which decision of the Court the defendants then and there excepted.

The plaintiff called *Moffat Howell*, who testified that he knew the dwelling houses located on the premises described in the declaration; that the house burned was worth about $2,400, and the other house not burnt was worth about $600; that the former house was burned November 5th, 1860, and stood on lot one in Block fourteen in the original town of Aurora. To which evidence the defendants objected; which objection the Court overruled and admitted the evidence. To which decision of the Court the defendants then excepted.

On *Cross Examination* the witness testified: That he was acquainted
90 with lands in the City of Aurora; that he had been assessor for several years in the town of Aurora and city of Aurora; that there were before and on the 5th day of March, 1859, and since then several and various plats of lands in the City of Aurora, recorded in the Recorder's office of Kane county, Illinois, which contained lots described as lots one, two, and three, in Block fourteen in each of said plats.

Ira A. W. Buck was recalled by the plaintiff, and testified: That he was, at the time of taking the policy of insurance in the declaration in this suit referred to, the duly authorized agent of said company in the City of Aurora; that he has been since and is now such agent; that the policy was duly signed by the President of said Company and attested by the Secretary and countersigned by the witness, as agent of the Company; that the Company was duly notified after loss on said policy at the time and in the manner alleged in said declaration; that all the preliminary proofs were duly put in, in the time and manner stated in the declaration.

Counsel for plaintiff asked witness, Did not the Company refuse to pay the loss on the ground of usury alone in the mortgage? Witness answered, Yes: that he (witness) had stated to plaintiff that was all the reason the Company assigned for not paying the loss, and that he has never stated to plaintiff that there was any other defence to said policy.

On *Cross Examination* he testified: That at the time of communicating to the Company the loss, the witness informed them that the said Delos W. Young had notified him, as the agent of the Company, that there was usury in the mortgage, and that he, Young, would not pay it; and that at that time that was the only defence that he, witness, knew of to the mortgage or policy; that the witness had no authority from the defendants to waive any legal defence that they might have to a suit on the policy.

The plaintiff then offered to assign an interest in said mortgage and note to the amount of said $1,500, to the said defendants.

The plaintiff here rested his case.

92 *Delos W. Young* then testified on behalf of the defendants; That he paid on the mortgage $445; that he borrowed, March 5th, 1859, for two years, $1,500 of the plaintiff, and gave the said note and mortgage introduced in evidence by the plaintiff; that he agreed to pay the plaintiff for the use of the same per cent. per annum; that the $1,500 in the note and mortgage was made to draw interest at ten per cent. per annum by their terms; that the balance, to wit: fifteen per cent., making in all $450, was put into four (4) different notes, payable in 6, 12, 18, and 24 months after their respective dates, and dated March 5th, 1859, and that he paid the plaintiff on said usurious interest September 21st, 1859, $100; January 14th, 1860, $10; July 23d, 1860, $160; October,

1860, $75; which evidence was objected to, but admitted, subject to objection, by the Court; that the witness testified that the value of the house burned was about $3,000; that the other was worth $1,000; that on the premises described in the declaration there were more than two houses.

23 On *Cross Examination* the witness testified: That he was mistaken as to the amount he paid on said mortgage; it was $345 instead of $445; that he paid the $345 as follows, to wit; $100 about Sept. 21st, 1859; $160 23d July, 1860; $150, of which was the ten per cent. interest expressed on the face of the note and mortgage then due; that the balance of the $160, to wit: $10, was costs made by advertising said premises for sale, which witness agreed to pay; $75 in October, 1860, which was the ten per cent. on the face of the mortgage and note then due: and $10 January 14th. 1860, making the $345; the $100 was paid on one of the notes given for the fifteen per cent. interest, as aforesaid; the payment of 160 dollars and 75 dollars were made on the interest that accrued on the face of the said 1,500 dollar note and mortgage; said note was the one the mortgage was given to secure; there was but one house burned on lot one in said declaration mentioned. The counsel for plaintiff asked witness whether he was the owner of the house that was burned? To which question the defendants objected. The Court overruled the objection, and admitted the witness to answer the question. To which decision of the Court the defendants then and there excepted.

Witness answered: I was the owner of the house that was burned; the other house on said lot I did not own. Which was all the evidence
94 offered or introduced by either party. And insomuch as the foregoing evidence and matters do not otherwise appear of record, the defendants pray the Court to sign and seal this their bill of exceptions, which is done.

~~R. F. PARKS, Jud~~
~~of the Court of Common Pleas of the~~
~~City of Aurora.~~

The appellants assigned the following errors:

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

2. The Court erred in excluding proper evidence, offered on the part of the defendants below.

3. The Court erred in rendering judgment for the plaintiff below.

4. The Court erred in rendering judgment for the plaintiff below to the amount of $1,520.50.

5. The Court erred in sustaining each of the plaintiff's (below) demurrers to the defendant's (below) special pleas.

6. That the judgment is contrary to law.

7. That the judgment is contrary to the evidence.

8. That the judgment is contrary to law and evidence.

9. That Court had no jurisdiction or authority in law or in fact to render the judgment in vacation.

Mordecai & Scales
attys for Appellants

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The Hartford Fire
Ins. Co.
Appellants
vs
Gw. M. Hadden
Appellee

Abstract.

Filed April 30. 1862
L. Letcher
Clk.

State of Illinois ss

The Hartford Fire Insurance Company appellants
vs
George W Hadden appellee

Supreme Court
Third Grand Division
April Term A.D. 1862

Appeal

May it please your Honors!

The first point to which we wish to ask the Courts attention is the sustaining of the appellee's demurrer to the appellants Special pleas.

This was done on the supposition that Sec 1st Sess. Laws Ill. 1853. page 34. - "That no corporation shall "hereafter interpose the defence "of usury in any action" has no application to the defence set up in these pleas - This we insist is not true -

While it may have the form or semblance of a

plea of usury yet in fact, it is but a denial that the appellee had a mortgage interest at the time of the commencement of the suit on the policy to the amount he claimed.

The first special plea shows that as to $345, of the appellee's demand, the appellants had a good defence, - that amount in legal contemplation had been paid to the appellee on his claim of $1500. That the second special plea shows a defence to the residue a certain amount of the residue, - and that the third special plea showed a defence to $335, of the said $1600. - The first and second special pleas were intended to state very near the same state of facts so as to meet any possible changes in proof.

While this Statute in letter is, perhaps, broad enough to prohibit this defence, yet it does not do it. "Such a construction ought "to be put on a Statute "as may best answer the "intention which the makers "had in view; and this "intention is sometimes to "be collected from the "Cause or necessity of making "the Statute, and sometimes "from other circumstances; and when discovered, it ought to be followed with reason and discretion; and a thing which is within the letter of a Statute, is not within the Statute, unless it be within the intention of the law makers. - See 3 Bl Comm R. 91, 92: These proposition are sustained and illustrated by various English Statutes where Courts have departed from the letter, in order to reach the spirit and intent of the act see

(Reniger v Fogassa, Plowd. 18.
Strange v Brooker, id. 88; 2 Inst. 64.
The King v. Gouger, 5 T. R. 449;
Morgate Rice &c. v Hannan, 3
B. & A. 266. Edwards v. Dick,
4 id. 212, per Holroyd, J.
These cases are cited in 3 Bowen
92.

"It was made in that case a point, that Wadhams was "a mere trustee for Scofield "and that he, being a deputy "of the sheriff at the time "of the sale, was prohibited "by statute from purchasing.

The statute is, "That it shall "not be lawful for any sheriff "or other officer, to whom "any such Execution shall "be directed, or any of their "deputies, or any person "for them or either of them, "to purchase any goods or "chattels, lands or tenements, "at any sale, by virtue of any "Execution, and all purchases "so made by them, or any "of them, or for the use "of them, or any of them

"shall be void". Admitting, as
"the plaintiff does that Nahum
"purchased for the use of Sco-
"the purchase comes within
"the letter of the act, but
"it could never have been
"the intention of the legislature
"to have prevented a Deputy
"Sheriff in an Execution from
"bidding, in order to secure
"his money. The object
"was to prevent abuse — that
"the Sheriff or his deputies
"should not be allowed to
"become purchasers at their
"own sales, and thereby be
"induced to conduct corrupt-
"ly in relation to them"
"thus said the Court, per
"Savage, Ch. J. on pages 95 &
"96. And the Court still re-
marks: "But surely it was
"never intended to place
"those persons in a worse
"situation than others, as
"to the collection of their
"demands". then quoting from
"Bac. Ab. tit. Statute (I) 15
"John. 380. per Ch. J. Thompson

this language: "Whenever the
" intention of the makers of
" a statute can be discover-
" -ed, it ought to be fol-
" -lowed with reason and
" discretion in the construc-
" -tion of the statute,
" although such construction
" seem contrary to the letter
" of the statute. "A thing
" which is within the letter
" of a statute is not within
" the ~~statute~~ statute, unless
" it be within the intention
" of the makers". "This pro-
" position is fully establish-
" -ed and illustrated by
" the cases cited on the
" part of the plaintiff"

The Court will see that the execution in that case was in favor of Hale against Robb directed to the Sheriff of Genesee County - That the land in question in that suit - which was ejectment - was sold under that execution by Oliver Lee a Deputy Sheriff. to Bradbury

to whom Lee gave a certificate of purchase. At the end of 15 months Lee made a Sheriffs deed to Wadham, - and Wadham then quit claimed to Scofield who was at the time of the sale also a Deputy Sheriff -

On the trial Lee the Deputy Sheriff testified that Scofield, the, Defendant, handed him the Execution and directed him to sell the premises in question stating at the same time that he had bought the judgment of Hale -

Here then, Scofield was a Deputy Sheriff at the time of the sale and he was prohibited by the, letter of the statute from getting or procuring Wadham to bid in the land for his use - But still the Court held, that sale was not within the intention of the law makers - and therefore held the sale good -

This Statute under consideration was passed by the legislature of this State at the solicitation of certain Rail Road Corporations who desired to borrow money and could not get it at the legal rates of interest as then existing to build and complete their roads. So we have been informed by one of the members of the judiciary committee to which the act was referred. Or the legislature may have concluded that corporations did not stand in need of the protection afforded by Statute against usury as it was said in 17 N. Y. R. 53. In that case the question was whether a Statute like ours and in the same language prohibiting corporations setting up the defence of usury applied to foreign corporations. And Justice Pratt delivering the opinion

of the Court says: "It is
" much more probable that
" the act grew out of con-
"-siderations connected with
" the principles upon which
" the usury laws are based,
" than upon any considera-
" tion of local benefit to be
" realized from burdening on
" the part of corporations to
" borrow money at any rate
" of interest-

" These laws were originally
" based upon the assumption
" that the needy borrower
" was in some degree in the
" hands of the lender. Govern
"-ment has therefore assumed
" that it was a duty incumbent
" upon it to protect the
" borrower against the rapacity
" of the latter by adequate
" pains and penalties-

" In regard to natural per-
"-sons, subject to the contin-
"-gencies of business, often with
" little or no capital to start
" with, these considerations might
" apply with great force;

" but in regard to corporations
" organized for the purpose
" concentrating in one undertaking
" the contributions of a large
" number of individuals until
" the aggregate shall amount
" to the capital supposed to be
" requisite for the successful
" prosecution of such under-
" taking, the legislature
" may well have assumed
" that no such protection
" was necessary; that of cor-
" -porations thus organized
" became borrowers it would
" not be from necessity, but
" voluntarily, to enable them
" to carry forward some
" enterprise which offered
" a reasonable expectation
" of profit sufficient to
" enable them to repay
" the necessary interest without
" loss or sacrifice -

" Upon the whole, I think
" no sufficient reason has
" ~~been~~ been adduced to
" justify this court in holding
" that the acts were designed

"to be partial in its effect,
" applicable to corporations
" of this state only, and not
" to those of foreign states."
It is highly probable that
the object of this statute
was one or both of those
stated. To give them great
advantages for borrowing
money and that they did not need
the protection afforded
by the usury laws.

Be that as it may
it never could have
been intended by the
law makers to have in-
-cluded in that statute
such defenses as are
have interposed by the
special pleas to the
appellee's demand on the
policy.

This statute is nothing
more or less than a repealing
statute, — repealing so much
of the usury laws as applies
to them. So the law of
usury must be considered at
the time of filing these pleas

and the commencement of this suit as not applying to corporations or rather as not including them within its protection. Then corporations stand in the same condition in every respect that they would have stood had every usury law studiously excluded them from its protection. Because a right or protection created by statute is lost absolutely as soon as the statute is repealed creating that right or protection. See Curtis and others v. Leavitt 15 N. Y. R. pages 15-2, 15-3, 15-4.

The Court say in that case on page 154: "The effect
" of the act of the 6th April 1850,
" is to repeal the statute of
" usury so far as it applies
" to corporations. The condition
" of this class of beings becomes
" the same as if the usury laws
" never existed. The title of
" the repealing act is significant. It is "to prohibit
" corporations from interposing

"" the defence of usury in any
"" action." The first section
" then declares, in a few
" short emphatic words, that
" the defence of usury shall
" not thereafter be interposed.
" It is the defence which is
" prohibited. The barrier wall,
" the place of strength which
" the usury laws set up between
" the lender and the borrower, is
" thrown down and levelled with
" the ground, whenever the ~~corpo-~~
" ~~ration~~ borrower is a corpo-
" ration. Henceforth the law
" offers no reward for bad
" faith and broken promises
" to this class of contractors. The
" object of the statute is to take
" away from corporate bodies
" the defence of usury — a defence
" which most men have come
" to regard as immoral meikleins
" and unjust."

Now if these views are
correct that corporations
must be treated in legal
contemplation as if they
never had been included

within the protection of any of our usury laws, then this case stands freed from some seeming difficulties - And if they never had been included within any of our usury laws, then we take it that there never would have been any objection to these pleas - For we think that it would have been as a matter of course that we could have plead and proven on the trial, any defence whatever that the debtor might have plead and proven -

That a more complete appreciation of the defence set up in these special pleas may be had, we now invite for a few moments, your Honors attention, to the nature of an insurance of an mortgage interest where, as such, it has been specifically insured as in this case, - and also to some of the rights of the insurer

and of the insured, in Lee's case.

" As persons owning different
" interests in the same subject
" may insure their several interests,
" a mortgagor and mortgagee,
" may both insure the same
" building; and in both cases
" the particular interest of each
" need not, as a general rule
" be described in the policy;
" but it may be described as
" the property of the assured.
" But where the mortgagee
" insures solely on his own account
" it is but an insurance
" of his debt; and if his debt is
" afterwards paid or extinguished
" the policy, from that time,
" ceases to have any operation,
" and even if the premises
" insured are subsequently de-
" stroyed by fire, he has no
" right to recover for the
" loss, for he sustains no
" damage thereby - Neither can
" the mortgagor take advantage
" of the policy, for he has
" no interest whatever therein -

" On the other hand, if the
" premises are destroyed by
" fire before any payment
" or relinquishment of the
" mortgage, the underwriters are
" bound to pay the amount
" of debt to the mortgagee,
" if it does not exceed the
" insurance. But, then, upon
" such payment the underwriters
" are entitled to an assignment
" of the debt from the mortgagee
" and may recover the same
" amount either at law or equity
" according to circumstances; for
" the payment of the insurance
" by the underwriters, does not,
" in such case, discharge the
" mortgagor from the debt,
" but only changes the creditor.
" The mortgagee can insure
" for himself, only to the
" extent of his debt, whereas,
" the mortgagor can insure
" to the ~~value~~ full value of
" the property, notwithstanding
" the incumbrance upon it; and,
" therefore, the insurable interests
" of the mortgagor and mortgagee

differ Essentially - See Angell on Fire and Life Insurance §§ 5-9; Kernochan v. New York Fire Insurance Company 5 Duer 1. — In this case the respective rights of the insurer and insured and the Mortgagor are very clearly illustrated and defined -

It is essential to the validity of an insurance policy against loss by fire that the insured has an interest in the subject insured recognizable in law or equity.

In this case that interest (if anything) was a mortgage interest and the insurance of that interest specifically was only the insurance of the debt - This the appellee could insure to its extent, but not for more -

Before he could recover he must prove that the mortgagor had at the time of making the mortgage, title in fee simple absolute to the property described in

his mortgage - And then introduces in evidence the mortgage, insurance policy and the note of the mortgagor - (there being no question about the preliminary proofs -) then the appellee rested have established prima facie not only his mortgage interest but also ~~the~~ its extent, in the property burned -

Now what he had the right to prove the appellants had the right to disprove - And in order to do that we plead according to the rules of pleading several matters that showed that in law and in fact - there was over $345. paid on the $1500 - insurance by the mortgagor according to the case of Hudden v Innes et al - where Walton, C. J. says: "Had he filed a special "plea, setting out the facts which "he offered to prove, we presume "it will not be questioned that he "might have had the interest thus "paid deducted from the principal "of the note - Else nothing could be

" more easy them to evade
" the statute of usury.

This defence Gives the original debtor could interpose against the appellee. The appellants must have the same right; or else the appellee can recover a greater sum of the appellants than the they can recover of the original debtor when they take an assignment of the debt.

It was expressly agreed in the policy that in case of loss the assured should assign to the appellants an interest in the mortgage equal to the sum of the loss paid. This stipulation the appellee cannot perform. if these pleas do not set up a good defence to the appellees demand pro tanto.

But we respectfully insist that the Court erred in not allowing the proof of the pleas under the general

issue -

For under that issue it was competent for the appellants to prove that the appellees mortgage interest was not so great as his proof prima facie established See Greenes testimony pages of Record 92 and 93

This testimony of Greene was competent to prove and did prove in connection with the appellees proof misrepresentation as to a material fact to the risk which the appellee was bound to disclose to the appellants at the time of making his application to be insured and for want of that disclosure the policy was void -

In the Case of the Ill. Mutual Fire Insurance Co. v. Marsilles

Manufacturing Co. 1 Gilm. on page 265 and 266 this Court says: "In the case of Stetson v. The Mass. Mutual Fire Ins. Co. 4 Mass. 337, Sewall, Justice, lays down the law thus: "The estimate of the risk undertaken by an insurer in a policy against loss by fire, must generally depend upon the description of it made by the assured or his agent. A mistake or omission in his representation of the risk, whether wilful or accidental, if material to the risk insured, avoids the contract; and a warranty being in the nature of a condition precedent must be fulfilled by the insured, before performance can be enforced against the insurer; and whether the thing warranted was material or not; whether the breach of it proceeded from fraud, negligence, misrepresentation,

" Or any other cause, the
" consequence is the same".
Citing several cases in
support of this doctrine.

Now here was a direct
representation on the part
of the appellee that
his mortgage interest was
$1500 in the property insured
and that representation
appears from the face of
the policy. And in Kernochan
v. N. Y. Bowery Ins. Co. 5th Duer R.
the Court says on page 10: "It
" is not the case of a mere
" concealment. The description
" of the plaintiff in the policy
" was calculated to mislead
" the defendants. It warranted
" them to believe that it was
" his own interest as mortgagee
" that alone was meant to be
" insured, and consequently, that
" on the payment of the
" loss, should a loss happen,
" they would be entitled to
" the benefit of the debt.
" It operated, therefore, by a

" concealment of the fact,
" that no such transfer could
" be made, as a distant mis-
" representation:- as affirming
" by implication that which
" does not exist in the instru-
- In that case the fact
not disclosed was that the
insurance was made for
the benefit of the mortgagor
he paying to the mortgagee
the premium that the
mortgagee had to pay
the insurer. The result
of that fact was the satisfac-
-tion of the mortgage debt
to the amount of insurance
money -

Now the fact that
the original debt or loan
from the appellee was
upon an usurious rate
of interest was concealed
from the insurer and
his agent - and the mort-
-age interest was represented in
the policy to the amount
to $ 1500. When the fact
it had in legal con-

-Completion in part been paid and satisfied- And further all the ~~pain~~ payments that Geny should make upon the usurious interest would in law be applied on the principal-

All insurance companies charge less for insuring a mortgage interest, than they do other interests where there is no subrogation. Because it is in effect an insurance against the insolvency of the original debtor- For if the property insured is burned, the insurer succeeds to the whole debt against the debtor and if the debtor is abundantly able to pay it- then the Company runs but very little risk at all- Simply the risk of collecting the debt.

The Learned Judge further in that
Case in 5 Lawr on page 11
and 12 "It follows, from
the observations already
made, that we do not
assent to the position that
the defendants are chargeable
in law with knowledge
of the agreement between
the plaintiffs and the mort-
gagor, and are bound with
the terms, to the same
effect that they would
have done been, had
these terms been expressly
communicated - We do not
think that the doctrine of
Constructive Construction notice
is applicable to the Case -
The defendants are, probably,
bound by all the provisions
and stipulations contained
in the mortgage itself, but
it would be most unreasonable
to impute to them the know-
ledge of a distinct collateral
and verbal agreement
varying the usual Construction
of the policy and of the

" nature, as it would other-
" wise have been understood, of the silent
" insured. We apprehend
" that the doctrine of construc-
" tive notice, as excusing an
" express disclosure, is only
" applicable when the facts
" already known to the insurer,
" he was bound to infer
" the existence of other facts,
" which, although material,
" were not communicated.

There is no doubt from the evidence disclosed in this record that Hadden the appellee supposed that his defence could not be set up (in case the property was burned) by the appellants. At least there was a material fact that he should have disclosed if that statute in relation to prohibiting corporations from pleading usury comprehends the defence set up in the plea.

For then he would

have an advantage that he could not get in the observance of that statute - which was that he could recover more of the appellants than being the debtor was owing him in law and in fact -

The appellee alleged in his declaration that the insurance was on his mortgage interest in the two wooden dwelling houses owned by J. M. Young situated on Lots one and three of the original Town of Aurora -

Here are some material allegations the appellee was called upon to make due proof of. before he had the right to recover upon the policy -

First - That his interest was a mortgage interest -

Secondly- That that interest was to the Amount of $1500.-

Thirdly- That the Mortgage interest was in the two wooden dwelling houses owned by D. W. Young-

Fourthly- That the said two wooden dwelling houses were situated on Lots one and three of the original Town of Aurora-

All the evidence the appellee introduced or offered to introduce as documentary proof in support of these allegations was the note mentioned in the Mortgage and the Mortgage from said Young and wife and said policy of ~~Young~~ insurance-

In order to show by parol that Young was the owner of the two wooden buildings the

appellee asked Gang: "Whether
" he was the owner of the house
" that was burned - To which
" question the defendants (Brlow)
" objected - The Court overruled
" the objection and admitted
" the witness to answer the question
" To which decision of the
" Court - the defendants (Brlow)
" then and there excepted"
"Witness answered I was
" the owner of the house
" that was burned" see Record
Page 93; and again Gang testi-
fied "that the mortgage intro-
" duced in evidence in this cause
" was the same mortgage given
" by him and covered the lot
" upon which his house stood
" which was burned Nov. 5th 1860
" and stood on Lot one (1) in
" Block 14 in the original Town
" of Aurora - To which testi-
" mony the defendants (Brlow)
" objected - But the Court over-
" ruled the objections and
" admitted the evidence -
" To which decisions of said
" Court the said defendant (Brlow)

"then and there Excepted"

To this parol evidence there are two objections- First- That it does not prove that at the time of making the Mortgage that Greig was the owner of the land or Lot on which the house stood that was burnd- Secondly That this parol evidence is totally incompetent and should have been excluded by the Court from its consideration See Ill. Mutual Fire Insurance Co. v. Marseilles Manufacturing Co. 1 Gilm. on pages 266 and 267. There the Court says: "Did the plaintiffs prove such "an interest in the lot upon "which the insured buildings "were erected, at the time "in the Court below? The only "evidence upon that subject was "the parol statement of James "H Woodworth, "that the de- ""fendants in error were the ""owners of the property insured" "It is said in 2 Philips on Ins. "735, 746 that, "in regard to a

" " Ship or other personal property,
" " possession and other acts
" " of ownership are evidence
" " of interest;" but we have
" not been able to find
" any authority in cases of
" insurance against fire
" where the same doctrine has
" been applied to an interest
" in land. But admitting
" that possession in this case
" could properly be consider-
" ed as prima facie
" evidence of a fee simple
" estate in the premises, so
" as to throw the onus pro-
" bandi upon the plaintiffs
" in error, has such posses-
" sion been proved by any
" ~~witness~~ of the witnesses to have
" been in the defendants in
" error? We think not. Where
" the possession of land
" alone is relied upon for
" any legal purpose, in the
" absence of paper ~~title~~ title,
" it should, in the language
" of the law, be a pedis
" possessio, one actual

" a occupancy of the premises
" in question - Webb. v.
" Sturtevant, 15 Conn. 181..

The Court-below should have
excluded the mortgage for
another reason: the mortgage
described the lands as "situated
" in the County of Kane and State
" of Illinois and in the City of
" Aurora and on Lots one (1) Two (2)
" and Three (3) in Block Number
" fourteen (14) as recorded in
" the Recorders Office of Kane
" County Illinois -

The Court-below should
have excluded the policy
of insurance for the reason
that the decription of the land
therein mentioned was and is
uncertain and ambiguous -
The description is as follows:
" "on his ~~interest~~ mortgage interest
" in the two wooden dwelling
" houses owned by C. N. Gano
" of Aurora Ill. situated on Lots
" Numbers one (1) and three (3)
" Original Town of Aurora

The proof shows that there are many platts of land in the City of Aurora recorded in the Recorders office of Kane County. Which respectively have Lots described as Lots 1-2-3 in Block 14- See Howells Testimony pages of Record 89 and 90-

Howells Testimony shows that the house burned was on Lot one, in Block fourteen in the Original Town of Aurora

The original plat and the numerous additions Contain respectively many Lots and Blocks - numbered progressively.

This shows that both the Mortgage and policy were void for ~~uncertainty~~ uncertainty at ~~least~~ least at law.

The Mortgagee was compelled to go in Equity and reform his Mortgage and policy and there obtain his relief & was entitled to any. The Court erred in admitting them in ~~evidence~~ evidence. And the

testimony introduced by the appellee to show that the Mortgage was intended to be on Lots one, two and three in Block 14 of the original Town of Aurora and that the policy was intended to be upon the house on Lot one in Block 14 in the original Town of Aurora, should have been excluded by the Court.

1 Such evidence was not competent in a Court of Law.

2 It did not support the declaration. For the declaration described the policy to be upon the house on Lots 1 and 3 of the original Town of Aurora

This word "of" between the words "3" and "the" was omitted from the policy.

So we insist may it please the Court that this Cause should be reversed.

Mortons & Scales
attys for appellants

100
Supreme Court
April Tr. 1862

The Hartford Fire
Insurance Company
Appellants
vs
Geo. W. Haddon
Appellee

Argument on the
behalf of Appellants

Filed May 1862
L. Sisson
Clerk

Ottawa July 1st 1862

Judge Caton

Mr. Wicket has
just sent me the enclosed
argument. He says that he took
it away by Mistake. The agenda
No. is 100.

L. Leland
per Rice

Judge Eaton
Ottawa
Ill.

In the Supreme Court of the
State of Illinois,
April Term A.D. 1862.
Third Grand Division.

The Hartford Fire Ins. Co.
vs Appellants
vs
George M. Hamlin
Respondent

And now comes the said Respondent by Arthur W. Winslett his Attorney, and moves the Court to strike from the Record in the above entitled cause, a paper appearing thereon and purporting to be a Bill of Exceptions, for the reason that said Paper is not and does not purport to be, sealed by the Judge by and before whom said cause was tried in the Court below - and also because, said Paper contains ~~has~~ certain other matters, informal, irregular, and which said paper does not properly constitute any part of the Record in said cause.

Arthur W. Winslett
Atty for Respondent

25-2

Def's Exhibit.

Hartford Ins. Co.

vs.

Hadden.

252

Motion to Strike

with Exceptions

pro forma.

Filed Apl. 29. 1862

L. Leland

Clk

Arthur Winnett.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

THE HARTFORD FIRE INSURANCE COMPANY,
Appellants,
vs.
GEORGE M. HADDEN, Appellee.
} APPEAL.

BRIEF OF POINTS AND AUTHORITIES BY APPELLANTS.

The 1st Sec. Sess. Law, Feb., 1853, P. 34—"That no corporation shall hereafter interpose the defence of usury in any action," has no application to this case, and therefore the Court below should have overruled each of the appellee's demurrers to the appellants' special pleas.

See Jackson vs. Collins, 3 *Cowen's R.*, 89, *and cases there cited.* Curtis and others v. Leavitt 15 N. Y. R. pages 152, 153 154.

Where the mortgagee insures solely on his own account, it is but an insurance of his *debt.*

See Angell on Fire Ins., § 59, 60, 61, 62, 63, *and cases there cited;* 5 Sumner A. 4. R. 1-

The mortgagee (appellee) could have insured for *himself only* to the *extent* of his *debt*; and when he obtained his policy, August 14, 1860, there was not then due him, according to statements made in each of said pleas, and admitted by the demurrers thereto to to be true, but $

The declaration says that the mortgage was made by Young and wife, on lots 1 & 2 ~~in block 14, of~~ the *original town* of Aurora, when the mortgage introduced describes the lots as 1 & 2 in block 14 in the *city* of Aurora. The Court should have excluded this mortgage, *because* of this *variance.* And it was erroneous in the Court to allow the appellee to introduce oral evidence to show that the mortgage was intended to cover the former property.

The platntiff below averred, in his declaration, that Young, at the time of executing the mortgage, was the *owner* of the *two wooden* buildings on lots ~~in block 14,~~ of the original town of Aurora. This allegation was not proven by competent evidence, and in fact, it was not proven at all. (See 1 Gilm. R., 266.) The term "owner," or "ownership," as applied to land, according to the authority of the case of *Wright* vs. *Bennet*, 3 Scam., 258, means a *fee simple* estate.

The Court should have permitted the appellants to prove, under the general issue, the usurious transaction between Young and the appellee, and the payments thereon.

See 1 *Gilm. R.* 266; 5 Gilm. A. G. R. 1

MONTONY & SEARLE,
Attorneys for Appellants.

100 252

The Hartford
Fire Ins. Co.
appellants
vs
Geo. M. Hadden
appellee.

Brief of print
& authorities —

Filed Ap. 29. 1842
J. Tolles
Clerk

United States of America
State of Illinois
Kane County
City of Aurora } SS

Pleas before the Honorable
Benjamin F. Parks

The Judge of the Court of Common Pleas
of the City of Aurora at a regular Term
of said The Court of Common Pleas of
the City of Aurora begun and held at the
Court Room in the City of Aurora in said County and State
on the Third Monday (the 17th day) of March
in the year of Our Lord One Thousand
Eight Hundred and Sixty Two and of
the Independence of said United States
the Eighty Six

Present The Honorable Benjamin F. Parks
The Judge of said Court

Dewitt C. Clark
Sheriff of Kane County

Attest
Charles P. Johnston
Clerk

The Court opened by Proclamation

Page 2d

Be it remembered that heretofore to wit on the 22d day of February A D 1861 the following Precipe was filed in the Clerks Office of said Court to wit

Georgo. M. Hadden
vs
Hartford Fire Insurance Company

The Clerk of Court of Common Pleas of the City of Cincinnati will issue a Summons in Assumpsit in the above entitled suit to the Sheriff of Hamilton County returnable to the next Term of said Court Damages $5000
February 22d 1861

S. M. Brown
Pltfs Atty

Endorsed on the back as follows to wit
Hadden
vs
The Hartford Fire Ins. Co.
Precipe
Filed Feby 22d 1861
J. J. Bans
Clerk

And also on the same day to wit the 22d day of February A D 1861 the following Summons was issued out of

and under the Seal of said Court to wit

State of Illinois
Knox County } ss.
City of Galesburg

The People of the State of Illinois to the Sheriff of said County Greeting: We Command You that you Summon The Hartford Fire Insurance Company if to be found in your County personally to be and appear before the Court of Common Pleas of the City of Galesburg in said on the first day of the next Term thereof to be holden at the Court House in the City of Galesburg in said County on the third Monday of March next to answer unto George. M. Hadden in a plea of Assumpsit to the damage of the said plaintiff as he says in the Sum of Five Thousand Dollars And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness James G. Bancroft Clerk of our said Court and the Seal thereof at Galesburg aforesaid this 22d day of February A D 1861

J. G. Bancroft Clerk

Seal

and under the Seal of said Court to wit

State of Illinois
Knox County } ss.
City of Galesburg

The People of the State of Illinois to the Sheriff of said County Greeting: We Command You that you Summon The Hartford Fire Insurance Company if to be found in your County personally to be and appear before the Court of Common Pleas of the City of Galesburg in said on the first day of the next Term thereof to be holden at the Court House in the City of Galesburg in said County on the third Monday of March next to answer unto George. M. Hadden in a plea of Assumpsit to the damage of the said plaintiff as he says in the Sum of Five Thousand Dollars And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness James G. Bancroft Clerk of our said Court and the Seal thereof at Galesburg aforesaid this 22d day of February A D 1861

J. G. Bancroft Clerk

Seal

Page 4th

Endorsed on the back as follows to wit

The Court of Common Pleas
of the City of Akron
March Term AD 1861
G. M. Hadden Plff
vs
The Hartford Fire
Ins Co Deft
Summons
Filed March 18th 1861
J. C. Barr clerk

Fee. 1 Def $ .50
1 Copy .50
1 mile .05
Ret .10
$1.15

S. W. Brown atty

Executed this writ February the 22d AD 1861 by delivering to J. A. W. Buck agent of the Hartford Fire Insurance Company and delivered at the same time a true copy of this writ to him the President of said not residing in this State

D. Clark Sheff
by J. D. Andrus
Deputy

And afterwards to wit on the 9th day of March AD 1861 the following Declaration was filed in the office of the clerk of said

Page 5th Court to wit

State of Illinois } The Court of Common Pleas
Kane County } of the City of Aurora
City of Aurora } March Term AD 1861

Geo. M. Haddan of Aurora Kane County Illinois plaintiff in this suit by S. M. Brown his attorney complains of the Hartford Fire Insurance Company defendants in a plea of Trespass on the case upon promises. For that the said defendants heretofore to wit on the fourteenth day of August in the year of Our Lord Eighteen Hundred and Sixty at Aurora to wit at the said City of Aurora in County aforesaid on the application of said plaintiff made a certain policy of Insurance in writing whereby the said defendants in consideration of Fifteen Dollars to them in hand paid by the said plaintiff the receipt whereof was thereby acknowledged did insure the said plaintiff against loss or damage by fire to the amount of Fifteen Hundred Dollars as follows to wit Fifteen Hundred Dollars for the term of Two Years on his mortgage interest in the two wooden Dwelling houses owned by D. M. Berry of Aurora Illinois situated on Lots No. one and three of the original Town of Aurora as described in application and survey No. 62

Page 6th And it was further agreed by said parties in and by said policy that in case of loss the said plaintiff should assign to the said defendants an interest in said mortgage to the amount of the loss paid And the said defendants for the consideration aforesaid did in and by said policy promise and agree to make good unto the said plaintiff his executors administrators and assigns all such immediate loss or damage not exceeding in amount the sum insured as should happen by fire to the property therein and herein above specified from the fourteenth day of August A D 1860 (at noon) unto the 14th day of August A D 1862 (at noon) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same should happen and to be paid within sixty days after notice and proof thereof made by the said plaintiff and received at the office of the said Defendants in conformity to the conditions annexed to said Policy Provided Always. and it is agreed in and by the said policy declared that the said defendants 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 any military or usurped power or any loss by theft at or after a fire And it was ~~agreed~~ in and by said policy further

Page 7th

provided that in case the said plaintiff had made any other insurance against loss by fire on the property therein insured and not notified to the said defendants and mentioned in an indorsed upon said policy then said insurance was to be void and of no effect And if the said plaintiff or his agents should thereafter make any other insurance on the same property and should not with all reasonable diligence give notice thereof to the said defendants and have the same indorsed on said policy or otherwise acknowledged by them in writing the same should thereon in case of any subsequent insurance upon said property which in the opinion of the said defendants with the sums already insured upon said property amounted to an over insurance then said defendants reserve to themselves the right of cancelling said policy and paying to the insured the unexpired premium pro rata can be of no effect

And that in case of any other insurance upon the said property either prior or subsequent to the date of said policy the said plaintiff should not in case of loss or damage be entitled to demand or receive of said defendants on said policy any greater portion of the loss or damage sustained that the amount the insured should bear to the whole amount insured in said property And it was in said policy agreed and declared to be the intent and meaning

Page 8th

of the parties thereto that in case the premises therein mentioned should at any time after the making and during the continuance of said policy of insurance be appropriated applied or used to or for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra hazardous or specified in the memorandum of special hazards in the terms and conditions annexed to said policy or for the purpose of storing using or sending therein any of the articles goods or merchandize in said terms and conditions denominated hazardous or extra hazardous or included in the memorandum of special hazards unless therein otherwise specially provided for or thereafter agreed to by said defendants in writing to be added to or indorsed upon said policy thereon and from thenceforth so long as the same should be so used appropriated applied or occupied the said policy should cease and be of no force & effect and it was moreover in and by said policy declared that said insurance was not intended to apply to or cover any book 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 nor bullion and that said policy was made and accepted in in reference to the conditions annexed thereto which were to be used and resorted to in order

Page 9th to explain the rights and obligations of the parties thereto in all cases not herein otherwise specially provided for And the said plaintiffs avers that the hazards and conditions in said policy agreed to were and are in the words following that is to say

Conditions of Insurance

1st Applications for Insurance must specify the construction and materials of the building to be insured or containing the property to be insured by whom occupied whether as a private dwelling or how otherwise its situation with respect to contiguous buildings and their construction and materials and whether any manufacturing is carried on within or about it and in relation to the insurance of goods or merchandise the application must state whether or not they are of the description denominated hazardous extra hazardous or included the memorandum of special hazards And a false description by the assured of a building or of its contents or omission to make known any fact material to the risk or an overvaluation shall render absolutely void a policy issuing upon such description or valuation And if any survey plan or description of the property herein insured is agreed to in this policy such survey plan or description shall be deemed and taken to be a part and

Page 10th portion of such policy shall be a warranty on the part of the assured. If after the insurance is effected either by the original policy or by the renewal thereof the risk shall be increased by any means within the control of the assured or if such building or premises shall become vacant and be unoccupied at any time during the term of this policy or be occupied in any way so as to render the risk more hazardous than at the time of insuring such insurance shall be void and of no effect If during the insurance 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 terminate the insurance after notice given to the assured or his representative of their intention to do so in which case the company will refund a ratable proportion of the premiums

2d No insurance whether original or continued shall be considered binding until the actual payment of the premiums by the assured to the company or its agent

3d Property held in trust or on commission must be insured as such otherwise the policy will not cover such property and in case of loss the names of the respective owners shall be set

forth in the preliminary proofs of such loss together with their respective interests therein certified by them By property held in trust is intended property held under a deed of trust or under the appointment of a Court of Law or property held as collateral security in which latter case this company shall be liable only to the extent of the interest of the assured in such property Goods on storage must be separately and specifically insured If the interest in the property to be insured be a leasehold interest or other interest not absolute it must be so represented to the Company and expressed in the policy in writing Otherwise the insurance shall be void

4th

Policies of insurance subscribed by this company shall not be assignable either before or after a loss without the consent of the company expressed by indorsement made thereon. In case of assignment without 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 sale 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 and the entry of a foreclosure of a mortgage or the levy of an execution shall be deemed an alienation of the property In case of claims for loss or damage on a policy assigned

Page 12th

where there is no actual sale or transfer of the property insured proofs of loss shall be made by the assured in conformity with the conditions of this policy in like manner as if no agreement had been made otherwise this policy shall be void and of no force or effect whatever and all liability on the part of this company shall cease 5th

In case of fire or loss or damage thereby or of exposure to loss or damage thereby it shall be the duty of the insured to use their best endeavors for saving and preserving the property and if they shall fail so to do this company shall not be answerable to make good the loss and damage sustained in consequence of such neglect

And it is mutually understood that there can be no abandonment to the insurers of the subject insured The company will not be liable for loss or damage caused by lightning except that which shall result from fire that may ensue therefrom nor for any loss either by fire or otherwise occasioned by the explosion of a steam boiler or occasioned by camphene or by the explosion of gunpowder or any other explosive substance

Or the keeping of gunpowder phosphorus and petroleum for sale or on storage upon or in the premises insured or the lighting of the same by camphene phosgene spirit gas or burning fluid or any other inflamable liquid without written

permission for the same in this policy shall
render it void

6th

Jewels Jewelry precious stones watches plate
medals musical instruments (musical instru
=ment in dwelling houses excepted) furniture
=& scientific instruments paintings prints
engravings statuary sculptures curiosities cash
and model are not included in any insura
=nce unless particularly specified in the policy

7th

All persons insured by this company and sus
=taining loss or damage by fire shall forthwith
give notice thereof to the company or its agent
and as soon after as possible shall deliver in a
particular account of such loss or damage
signed with their own hands and they shall
accompany the same with their oath or affir
=mation declaring the said account to be true
and just showing also whether any and what
other insurance has been made on the same
property given a copy of the written portion
of the policy in this company and of all other
policies upon the same property what was
the usual cash value of the subject insured
what was their interest therein in what general
manner (as trade manufactory merchandise
or otherwise) the building insured or containing

Page 14th the subject insured and the several parts
thereof were occupied at the time of the loss and who
were the occupants of said building and when and how
the fire originated so far as they know or believe
They shall also produce a certificate under the hand
and seal of a magistrate Notary Public or Commis
=sioner of deeds (most contiguous to the place of the fire
and not concerned in the loss as a creditor or other
=wise or related to the insured or sufferers) stating that
he has examined the circumstances attending the
fire loss or damage alleged and that he is acq
=uainted with the character and circumstances
of the insured and that he verily believes that
he she or they have by misfortune and without
fraud or evil practice sustained loss and damage
on the subject insured to the amount which such
magistrate notary public or commissioner of
deeds shall certify. When Merchandize or
other personal property is partially damaged the
insured shall forthwith cause it to be put in as
good order as the nature of the case will admit
assorting and arranging the various articles accord
=ing to their kinds separating the damaged from
the undamaged merchandize or other personal
property and shall cause a list or inventory of the
whole to be made naming the quality and
cost of each kind. The amount of damage shall
be then ascertained by the examination and appr
=aisal of each article by disinterested appraisers

mutually agreed upon whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant one half the appraisers fee to be paid by the insurer And the insured shall 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 claim thereupon and subscribe such examination the same being reduced to writing. And whenever required the insured shall produce and exhibit his her or their books of account and other vouchers to the insurer or their agent at the office of the company in support of his her or their claim and permit extracts or copies thereof to be made and shall also produce certified copies of any bills or invoices of property destroyed or damaged the originals of which may have been lost mislaid or destroyed and shall also exhibit to any person named by the company and shall permit to be examined by them any property damaged or which any loss is claimed or any property owned which was insured by this policy. And until such proofs declaration and certificate are produced and such appraisal and examination of property permitted by the claimant the loss shall not be payable. All fraud or false swearing shall cause a forfeiture of all

Page 16th

claims on the insurers and shall be a full
bar to all remedies against the insurers on this
policy

8th

Reinsurance for any other insurance company to be
on the basis of joint liability with said company
and in no event will this company be liable for
a sum greater than such portion as the sum here
=by re-insured bears to the whole sum insured on
the property by the company re-insured and in case
of loss this company to pay their pro-rata proportion
at the same time manner and form as the comp
=any re-insured

9th

Payment of all losses shall be made in sixty days
after the loss shall have been ascertained and proved
and the proof received at the office and in case
differences shall arise touching any loss or damage
after proofs thereof have been received in due form
it may be submitted to the Judgment of arbit
=rators indifferently chosen whose award in writ
=ing shall be binding on the parties In case
of any loss or damage to the property insured it
shall be optional with the company to replace the
articles lost or damaged with others of the same
kind and equal goodness and to rebuild or
repair the building or buildings within a reason
=able time giving notice of their intention so to do
within thirty days after having received the proofs of

loss required by the seventh article of these conditions

10th

Insurance once made may be continued for such further time as may be agreed upon the pre=mium thereof being paid and a renewal receipt being given for the same. And it shall be consid=ered as continued under the original representation in so far as it may not be varied by a new repre=sentation in writing which in all cases it shall be incumbent on the party insured to make when the risk has been changed either as to the thing or by the surrounding or adjacent buildings and if at or before the time of renewing any policy of insurance on property where the risk has been increased by the erection of buildings or by the use occupation or vacan=tion of the premises insured or of the neighboring premises the assured shall fail to give informat=ion thereof said policy and renewal shall be void and of no effect

14th ?

Where property insured by this company is damaged by removal from a building in which it is exposed to loss by fire said damage shall be borne by the insured and insurers pro rata in the proportion that the whole sum insured bears to the value of the property insured of which proof in like form shall be made by the claimants

15th

The company will not be answerable for any loss

Page 18th

arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney 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

13th

It is furthermore hereby expressly provided that no suit or action of any kind against said company for the recovery of any claim upon under or by virtue of this policy shall be maintainable in any Court of Law or Chancery unless such suit or action shall be commenced within term of twelve months next after the loss or damage shall occur and in case any suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occured the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced

Clause of Hazards

And Hazardous staple foreign dry goods in fixtures and staple and domestic dry goods in stores where no hazardous merchandise is kept and household furniture in dwelling houses may be insured at 5 cents per $100 in addition to the rate

Page 19th of the building

Hazardous The following trades, and occupations goods, wares and Merchandise are deemed hazard=ous and subject the building and all its contents to a additional charge of 10 cents per $100. they are China or earthern or glass ware or plate glass in boxes crates or casks fire crackers in packages flax in bales grocers stock gutta percha manufacture=ures hat ironing and trimming or pressing hay pressed in bundles hemp in bales India Rub=ber manufactured, manilla grass in bales oil sail making sugar making sisal grass in bales spirituous liquors sugars sulfur tallow wine dealers stock (not including wine in glasses unpacked)

The Following are considered hazardous on account of their liability to damage and are charged 10 cents per $100 in addition to but do not increase the rate of the building they are boots shoes brushes (Stock of) card printing by hand power coffee cotton batting and wadding dry goods (General stock of) flow=ers and feathers in package hardware and cut=lery hides and leather indigo looking glasses in boxes metals (in bars rods pigs or sheets) paints ground in oil paper hangings paper in reams potash rice spices tailors stock and ready made clothing teas and tobacco grains tin or steel

Page 20th

ism or copper ware wine in casks wine in glass packages window or plate glass in bxes and generally all other stock of merchandise (in buildings where fire heat is not used for manufacturing) not elsewhere enumerated

Extra Hazardous The following trades manufac=turing goods wares and merchandise are deem=ed extra hazardous and subject the building and all its contents to an additional rate of 20 cents per $100 thus one alcohol Apothecaries stock bonnet box and paper box making basket bleaching or making basket sellers stock bot repairing brass turning or working brush makers stock Cabinet makers stock carving china earthen or glass ware or look=ing glasses with packing or unpacking chees=ate making coloreman stock copper plate print=ing cotton in bales cotton brokers & samples daguerre=otyping drugs (unpartic stocks without inflammable acids or phosphorus) essentials oils eating houses or repositories gilding gutta percha goods gum making or repair=ing hat finishing (with use of fire heat to steam and block the bodies) india rubber goods, liquor bottling lithographing manilla grass unpacked morocco manufacturing musical instrument makers stock oakum in bales printers stock perfumers stock plumbing and pewtering pocket book making porter houses printing of newspapers and engrav=ing rags in packages resin ship chandleries spirits

& turpentine umbrella making upholstery mon
=ufacturing varnish woolen ware silks stock
and wool

The following are considered extra hazardous on
account of their great liability to damage and
are charged 25 cents per $100 in addition to but do
not increase rate of the building they are artificial
flowers book sellers stock cabinet ware China glass
or earthern ware unpacked confectioners stock dagu
=erotypists stock furs unpacked fancy goods jewel
=ry stock lamps sellers stock liquor in glass unpa
=cked looking glasses unpacked millinery stock
musical instruments sheet printed music mud
=le optical and mathematical instrument makers
stock pictures prints precious stones pocket makers
stock silversmiths stock silver plated ware straw
goods stationers stock toy shops Rugs stock watch
makers stock and tools trimmed or plate glass unpack
=ed and wine in glass unpacked

Memorandom of Special Hazards Acids (nitric
sulphuric muriatic and other acids causing ign
=itions) bakeries bank mills bleaching works black
=smithing block and pump making book binderies
boat builders shops brass foundries breweries brick
yards with kilns brush manufactories cabinet
makers shops chair makers shops carpenters shops
Candle manufactories Camphene or gas Copper
smiths shops with forges Coffee and spice mills

Page 22 Chemical laboratories coachmaking ships combman
=ufactories confectionery manufactories Coopers Shops
cum Bibo cotton mills Cotton presses cotton unfactor
=ies cotton ginning establishments Dyeing establishments dry
=goods stock (wholesale) dry and grist mills ether
fan dressing establishments floor cloth manufacto
=ries felting mills flax unfactored gas manufact
=ories glass manufactories grain mills manufactories
grist or flouring mills gun manufactories hat
manufactories hay unfactored. house building
and repairing hemp unfactored hay pressed hemp
manufactories hotels ink manufactories iron
foundries ivory black and lamp black manu
=factories lamp manufactories lime yards and
sheds lime whitened livery stables lumber yards
looking glass and picture frame manufactories
machine shops mahogany yards malt houses
metal mills musical instrument manufac
=tories oil cloth manufactories oiled clothing
manufactories oil mills and manufactories
omnibus stable plating plate ware manufac
=tories painting buildings and yards paper mills
paper hanging manufactories percussion cap
manufactories perfumery manufactories planing
sawing or moldy mills printing & book and
job printing posts houses print works rolling
mills rope and cordage manufactories rag
and junk shops stock cards (iron) manufactories
stone manufactories ship building & repairing

Saw mills soap manufactories silversmiths manufactories Spirit gas manufactories and Spirit gas or oil Stables Stave yards Steamboats Steam engines in use tobacco manufactories Type and Stereotype foundries Tallow melting establishments Tanneries Taverns timber yards wool mills wheelwrights Ships and generally all mills and manufacturing establishments and all trades and occupations requiring the use of fire heat not before enumerated.

The following are not to be insured at any rate of premium viz brimstone works distilleries flax mills gunpowder oil boiling houses oakum factories panoramas or other scenic paintings patent leather manufactories sash and blind factories snuff mill splanning mill tar boiling houses theatres turpentine manufactories varnish makers Steam saw mills organ repairers and india rubber factories

Plate Glass doors and windows when the plates are of the dimensions of three square feet or more are subject to an extra premium and must be separately and specifically insured

Fences and privies also store furniture and fixtures must be separately and specifically insured

Page 24th And the said plaintiff further says that after
=wards to wit on the 14th day of August A D 1860
at the City of Aurora aforesaid in the County afore
=said in consideration that the said plaintiff
at the special instance and request of said defend
=ants had then and there made to the said defend
=ants a large sum of money to wit the sum of
Fifteen Dollars lawful money of the United States
of America as a premium for the insurance
of the said sum of Fifteen Hundred dollars of
and upon the premises and property in said
policy of insurance mentioned and had then
and there undertaken and faithfully promised
the said defendants to perform and fulfill all
things in said policy of insurance and the
conditions thereto annexed contained on the
part and behalf of the said insured to be
performed fulfilled and kept the said
defendants then and there faithfully promised
the said plaintiff that they the said defendants
would become and be an insurer to the said
plaintiff of said sum of Fifteen Hundred dollars
upon the premises property in said policy of
insurance mentioned and would perform
and fulfill all things in said policy mentioned
on their part and behalf as such insurer to be
performed and fulfilled and the said defendants
then and there became and were an insurer
to said plaintiff of the sum of Fifteen Hundred

Dollars for the term of two years upon said premises and property in said policy of insurance mentioned to wit at the City of Aurora aforesaid And the said plaintiff avers that at the time making of the said policy of insurance as aforesaid and from thence until the loss and damage hereinafter mentioned he had an interest in the said insured premises and property to a large amount to wit to the amount of all the money by him insured thereon and that he was and still is the owner of said mortgage interest in said premises as above mentioned so insured to wit at the City of Aurora aforesaid and that afterwards to wit on the 5th day of November A D 1860 the said premises and property in the said policy of insurance mentioned were burnt consumed and destroyed by fire which did not happen or take place by means of any invasion insurrection riot or civil commotion or of any military or usurped power whereby the said plaintiff sustained damages to a large amount to wit to the amount of the money thereon insured to wit at the City of Aurora in said County of Kane And the said plaintiff further avers that the said property and interest insured by the said defendants in and by said policy above mentioned at the time of the making of said

Page 26th

policy or at any time since were insured in any other office than the said defendants

And the said plaintiff avers that the buildings in said policy mentioned were not at any time after the said insurance and during the continuance thereof appropriated applied or used to or for the purpose of carrying on or exercising therein any trade or business or vocation denominated hazardous or extra hazardous or specified in the memorandum of special hazards in the term and condition annexed to said policy or for the purpose of storing using or sending therein any of the articles goods or merchandise denominated hazardous or extra hazardous or included in the memorandum of special hazards unless otherwise specially provided for in said policy

And the said plaintiff further avers that he forthwith after the said loss to wit on the 6th day of November AD 1860 gave notice thereof to said defendants and as soon thereafter as possible to wit on the 12th day of November AD 1860 at Aurora to wit at the City of Aurora in the County aforesaid did deliver to the said defendants as particulars an account of their loss and damage as the nature of the case would admit and signed by the said plaintiff and accompanied the same with the

oath of plaintiff that said account was in all
respects just and true And showing in said
account the value of the plaintiffs ~~property insured~~
amount in said property insured and in what
general manner the building insured was
occupied at the time of the loss and the name
of the person having or occupying the same
his interest in the property insured at the time of
the loss and damage aforesaid And that annex
=ed to said account and therewith delivered
was a certificate under the hand and seal of a
notary public most contiguous to the place
of the fire and not concerned in the loss or
damage alleged and that he was acquainted
with the character and circumstances of the
insured and that he verily believed that the
said insured had by misfortune and without
fraud or evil practice sustained loss and dam
=age on the building insured to the amount
of fifteen hundred dollars to all of which
proofs the said defendants then and there
made no objection

And the said plaintiff
further avers that although the sixty days have
elapsed and although he has offered to assign
to the said defendant all interest in his said
mortgage to the amount of the loss paid and is
now ready willing so to do and that although
he has in all things observed performed and

Page 28th

fulfilled all and singular the matters and things which on his part were to be observed fulfilled and performed according to the form and effect of said policy of insurance

And although he has sustained loss and damages on occasion of said fire to a large amount to wit to the amount of fifteen hundred dollars and upwards yet the said defendants have not paid to said plaintiff the said sum of money so by the said defendants insured as aforesaid or repaid or reimbursed the said loss sustained by the said fire as aforesaid although often requested or any part thereof but the same so insured as aforesaid and the said loss every part thereof still remains in arrear and unpaid contrary to the form and effect of said policy of insurance so by the said defendants in that behalf made as aforesaid

And also for that whereas the said plaintiff on the 14th day of August A.D. 1860 at Aurora to wit at said City of Aurora was interested as mortgagee in the two wooden dwelling houses owned by one D. McGarry of Aurora Illinois situate on lot No one and three of the original Town of Aurora to the value and amount of fifteen hundred dollars and so continued interested until the destruction of the said property by fire as hereinafter mentioned

Page 29th and the said Defendants on the same day in consideration of a premium in money then and there paid to them by the Plaintiff made a Policy of Insurance upon the said Plaintiff interest as mortgagee as aforesaid in said dwelling houses and thereby promised the said Plaintiff to insure Fifteen Hundred Dollars therein from said 14th day of August A D 1861 until the 14th day of August A D 1862 against all such immediate loss or damage as should happen to said dwelling houses by fire other than fire happening by means of any invasion insurrection riot or civil commotion or of any military or usurped power to the amount aforesaid to be paid to the said Plaintiff in sixty days after notice and proof of the same upon condition that the Plaintiff in case of such loss should forthwith give notice thereof to said Company And as soon thereafter as possible and deliver in a particular account thereof under his hand and verified by his oath or affirmation and should if required produce his books of account and other proper papers and should declare on his oath whether any and what other insurance was made upon said property and should procure a certificate under the hand and seal of a magistrate notary public or commer

Page 30th

=sions of dwellings most contiguous to the place of the fire and most concerned in the loss was related to the plaintiff that he was at the time of certifying acquainted with the Character and circumstances of the plaintiff and knew or verily believed that he really and truly by misfortune and without fraud or evil practice had sustained by such fire loss and damage to the amount therein mentioned

And the plaintiff avers that afterwards and before the expiration of the time limited in said policy to wit on the 8th day of November A D 1860 the said Dwelling Houses on said lot No One was accidently and by misfortune totally consumed by fire of which loss the said plaintiff forthwith gave notice to the said defendants and as soon as possible thereafter to wit on the 15th day of November A D 1860 delivered to them as particular an amount ~~as the nature of the case would admit~~ thereof as the nature of the case would admit under his hand and verified by his oath and annexed to said account and the papers delivered was certificate under the hand seal of a notary public most contiguous to the place of the fire and not concerned in the loss and damage that he was acquainted with character and circumstances of the insured and verily believed that

the said insured had by misfortune and without
fraud or evil practice sustained loss and dam
=age by the said fire to the amount in said
certificate mentioned to wit the sum of Fifte
hundred dollars to all of which proofs the said
defendant then and there made no objection
Yet though often requested after such proof and
notice of said loss once though sixty days
have elapsed and although the said plaintiff
has offered to assign to the said defendants his
interest in the property to the amount of his loss
and is now ready and willing so to do
and has in all things observed and performed
and fulfilled all and singular the matters
and things on his part to be performed accord
=ing to the form and effect of said policy of insu
=rance And although the said plaintiff has
sustained damages to a large amount on acc
=ount of said fire to wit to the amount of
$1500, and upwards yet the said Defendants
have not paid the said sum of money so mon
=ed as aforesaid although often requested so to do
nor any part thereof but that the said loss and
every part thereof still remains wholly unpaid
contrary to the form and effect of said policy of
insurance And whereas also the said def
=endants afterwards to wit on the first day
of February A D 1861 at the place aforesaid
were indebted to said plaintiff in the sum of five

Page 32

thousand dollars for money before that time by the said plaintiff paid laid out and expended for said defendants at the special instance and request of said defendants And also in the further sum of three thousand dollars for other money by the said defendants before that time had and received to and for the use of the said plaintiff and being so indebted the said defendants in consideration thereof afterwards to wit on the day and year last aforesaid and at the place aforesaid undertook and then and there promised the said plaintiff to pay him the said sums of money in this count mentioned when they should be thereto afterwards requested

And whereas also the said defendants afterwards to wit on the day and year last aforesaid at the place aforesaid accounted together with said plaintiff of and concerning divers other sums of money before that time due and owing by said defendants to said plaintiff and then and there being in arrear and unpaid and upon such accounting the said defendants were found to be indebted to said plaintiff in the further sum of three thousand dollars of like lawful money as aforesaid and being so found in arrear and indebted to said plaintiff the said defendants in consideration thereof afterwards to wit on the same

day and year aforesaid and at the place aforesaid undertook and then promised the said plaintiff to pay him the said sum of money last mentioned when they should be thereunto afterwards requested Nevertheless the said defendants although often requested have not yet paid the said several sums of money above mentioned in the Special Counts or any or either of them or any part thereof to said plaintiff but so to do have wholly neglected and refused and still do neglect and refuse to the damage of said plaintiff of three thousand dollars and therefor he brings suit &c

S. H. Brown Pltfs atty

Endorsed on the back as follows to wit

George Mc. Haddon
vs
Hartford Insurance
Company
Assn

Filed March 9th 1861
J. C. Bancroft Clerk

S. H. Brown Pltfs atty

Page 34th

And afterwards to wit on the 18th day of March A D 1861 it being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in this cause and entered of record in said Court to wit

George. M. Hadden
vs
Hartford Fire Insurance. Company
} Assumpsit

This day come the defendant by Montony and Bailey its attorneys and enter a motion for a rule upon plaintiff to furnish certain papers

And afterwards to wit on the 21st day of March A D 1861 it being one of the days of the March Term A D 1861 of said Court the following among other proceedings were had in this cause and entered of record in said Court to wit

George. M. Hadden
vs
Hartford Fire Insurance. Company
} Assumpsit

This day on plaintiffs

Page 55

motion Defendant is called to plead herein by to morrow morning

And afterwards to wit on the 22. day of March A D 1861 it being one of the days of the regular March Term A D 1861 of said Court the following pleas were filed on the part of the Defendants in the Clerk's office of said Court to wit—

Hartford Fire Insurance Company
vs
George M. Hadden

} The Court of Common Pleas of the City of Oswego on the March Term thereof A D 1861

And the said Hartford Fire Insurance Company Defendants aforesaid by Mantony & Searles their attorneys come and defend the wrong and injury when &c and say that they did not undertake and promise in manner and form as the said plaintiff has complained against them And of this they put themselves upon the Country &c

And the said plaintiff doth the like
D. A. Brown Plff. atty.

Mantony & Searles
attys for Defendants

And the said Defendants for a further plea in this behalf as to $3115

Page 36 [illegible]

of the said $1500, mentioned in said declaration of said plaintiff doth not now Because they say that before the making of said policy of insurance in said declaration mentioned to wit on the fifth day of March A.D. 1859 at the City of Aurora aforesaid in the County of Kane and the State of Illinois it was corruptly agreed against the form of the Statute in such case made and provided by and between the said plaintiff and one Delos N. Young (he being the person mentioned in said declaration by the name of D. N. Young) that the said plaintiff should lend and advance to the said Delos N. Young a certain sum of money to wit the sum of $1500, and that he the said plaintiff should forbear and give day of payment of the said sum of $1500 from the time of lending and advancing the same for the space of two years then next after the said fifth day of March A.D. 1859 and for the forbearing and giving day of payment of the sum of $1500 as aforesaid the said Delos N. Young should give and pay to the said plaintiff a certain rate of interest per annum to wit. twenty five per cent per annum on said $1500, making the whole sum of said interest at the said rate for said two years on the said $1500

Page 3 of 4

amounts to the sum of $50 and for securing the repayment of said sum of $1500, so to be lent and advanced as aforesaid two years then next after the said Eighth day of March A.D. 1859 and the said interest money as hereinafter stated the said Delos. M. Vorny should make and execute to the said plaintiffs an instrument in writing commonly called a Judgment note for said $1500, and payable two years after the date thereof with interest at ten per cent per annum payable semi-annually and for the securing the balance of the said interest money that is to say a sum of $450 thereof the said Delos. M. Vorny should make and execute to the said plaintiffs his (the said Delos. M. Vorny) four several instruments in writing commonly called Judgment notes each for the sum of $112.50/100 and to become due and payable respectively in Six months one year Eighteen months and two years after their respective dates with interest at ten per cent per annum after due And that also for further securing the repayment of the said $1500, as specified in the first above mentioned Judgment note when the same should become due and payable as therein set forth the said Delos. M. Vorny and Ellen. B. Vorny his wife should make and execute to the said plaintiffs the

Page 38th mortgage in said declaration mentioned

And the said defendants over that in pursuance and in pursuance of the said corrupt and unlawful agreement the said Delos. R. Conny afterwards to wit on the said 5th day of March A.D. 1859 at the City of Aurora aforesaid made and executed to said plaintiff the said first mentioned Judgment note for the sum of $1500, aforesaid and made the same payable two years after the date thereof with interest at ten per cent per annum payable semi annually and the same note purporting to be for value received and also then and there made executed to the said plaintiff the said last mentioned four several Judgment notes each for the sum of $112 50/100 and to become due and payable respectively in six months one year eighteen months and two years after their respective dates with interest at ten per cent per annum after due each of the said last mentioned Judgment notes intending and purporting on its face to be for value received

And the said Delos. R. Conny then and there did deliver the whole of the said Judgment notes so made as aforesaid to the said plaintiff on the terms aforesaid and the said defendants over that in further pursuance of the said corrupt agreement the said

Page 39th Delos. N. Young and Ellen, B. Young on the said 5th day of March A.D. 1859 at the City of Omaha aforesaid did make execute and deliver to the said plaintiff the mortgage aforesaid for the purpose aforesaid and on the terms aforesaid

And that in further pursuance of the said corrupt and unlawful agreement the said plaintiff afterwards to wit on the day and year last aforesaid did lend and advance to the said Delos. N. Young the sum of $1500 and the said defendants owe that the said rate of twenty five per cent per annum on the said sum of $1500 exceeds the rate of ten per cent per annum contrary to the statute in such case made and provided And the said defendants further owe that afterwards to wit on the 21st day of September A.D. 1859 at the city of Omaha aforesaid the said Delos. N. Young paid to the said plaintiff on the said unlawful interest a part payment thereof the sum of $100.

And the said defendants further owe that afterwards to wit on the 14th day of January A.D. 1860 at the place last aforesaid the said Delos. N. Young paid to the said plaintiff on the said unlawful interest a further part payment thereof the further

Page 48 the sum of $10.

And the said defendants further avers that afterwards to wit on the 23 day of July A.D. 1860 at the same place the said Delos. N. Young paid to the said plaintiff and the said unlawful interest as a further part payment thereof the further sum of $160,

And the said defendants further avers that afterwards to wit on the 11th day of October A.D. 1860 at the same place the said Delos. N. Young paid to the said plaintiff on the said unlawful interest as a further part payment thereof the further sum of $75, making in all the full sum of $345 which the said Delos. N. Young has paid as aforesaid on the said unlawful interest

Whereby and by force of the statute in such case made and provided the said plaintiff has become liable to forfeit the whole of the said interest money so contracted to be received by him from the said Delos N. Young and that the said defendants have a right to have the said $345 so paid as aforesaid on the said unlawful interest applied to the part payment and discharge of part of the said $1000 so lent and advanced as aforesaid Wherefore they pray judgment whether the said plaintiff

Page 4 ought to have and maintain his afore
said action against them as to the $345 of the
said $1500 which was paid as aforesaid

And the said defendants for a further
plea in this behalf as to so much of the $1155,
(which is the balance of the said $1500 in the
said second plea and declaration mentioned
after deducting therefrom the $345 in this last
plea mentioned) as shall be equal to the amo
-unt that shall be due on the four interest note
hereinafter mentioned on the trial of this cause
say actio non because they say that before
the making of the said policy of insurance to
wit on the fifth day of march A D 1859 at
the City of Aurora aforesaid in the County of
Kane and State of Illinois. it was corruptly
and against the form of the Statute in such
case made and provided agreed by and with
between the said plaintiff and one Delos, M.
Young (he being the person mentioned in said
declaration by the name of D. M. Young)
that the said plaintiff should lend and
advance to the said Delos. M. Young a certain
sum of money to wit the sum of $1500 and
that he the said plaintiff should forbear
and give day of payment of the said sum
of $1500 from the time of lending and advan

Page 42

=cing the same for the period of two years
then next after the said 5th day of March
A. D. 1859 and for the forbearing and giving
day of payment of the said sum of $1500 as
aforesaid the said Delos, N. Gorny should
give and pay to the said plaintiff a certain
rate of interest to wit twenty five per cent
per annum on said $1500 making the whole
sum of said interest at the said rate for
said two years on the said $1500 amount-
ts $750 and for the securing of the pay-
=ment of the said $1500 as to be lent and
advanced as aforesaid two year then next
after the said 5th day of March A D 1859
and the said interest money thereon as herein
=after stated the said Delos, N. Gorny should
make and execute to the said plaintiff his
promissory note for said $1500 payable two
years after the date thereof with interest at
ten per cent per annum payable semi-
-annually and for securing the balance of the
said interest money that is to say $450 that
the said Delos, N. Gorny should make and
execute to the said plaintiff four several
promissory notes each for the sum of $112.50
and to become due and payable respectively
in six months one year Eighteen months and
two years after this respective date with interest
at ten per cent per annum after due

And that also for further securing the
repayment of the said $1500 which should
be specified in a promissory note as afore
=said together with the interest so to be speci
=fied in the same note as aforesaid the said
Defts. W. Conny and Ellen B. Conny his wife
should make and execute to said plain
=tiff the mortgage in said declaration men
=tioned

And the said defendants now
that in pursuance of the said
corrupt and unlawful agreement the
said Defts. W. Conny afterwards to wit
on the fifth day of March A D 1859 at the
City of Aurora aforesaid made and exe
=cuted to said plaintiff the said first-
mentioned promissory note for the said
sum of $1500 aforesaid and made the
same payable two after the date thereof
with interest at ten per cent per annum
payable semi annually and the same
note bears date of the day and year last
aforesaid and purporting on its face to
be for value received and also that one
thereof made and executed to the said plain
=tiff the said mentioned four several promi
=ssory notes each for the sum of $112 50/100
and to become due and payable respectively

Page 44th in six months One year Eighteen month and two years after their respective dat with interest at ten per cent per annum after date and each of the same notes pretending and purporting on its face to be for value received and bearing date on the day and year last aforesaid

And the said defendants further over that in performance and in fur=ther part performance of said corrupt and unlawful agreement the said Delos N. Young did then and there deliver the whole of the said promissory notes so made as aforesaid to the said plaintiff on the term aforesaid

And the said defendants further over that in performance and in further part performance of the said corrupt and unlaw=ful agreement the said Delos N. Young and Elbert B. Young did then and there make execute and deliver to the said plaintiff the mortgage aforesaid for the purposes aforesaid and on the terms aforesaid

And that in further performance=ance of the said corrupt and unlawful agreement the said plaintiff afterwards to wit on the day and year last aforesaid did lend and advance to the said Delos

Page 45 1/2 N. Vomy the Sum of $1500

And the said Defendants aver that the said rate of twenty five per cent per annum interest on the said sum of $1500 exceeds the rate of ten per cent per annum contrary to the form of the statute in such case made and provided

And the said Defendants aver that the said four promissory notes given for said $450 part of the said interest were and are by the law merchant and by the statute of this State negotiable Whereby and by force of the Statute in such case made and provided the said plaintiff has become liable to pay the whole of the said interest money so contracted to be received by him from the said D. Ellis, N. Vomy and that said Defendants have the right to have the whole amount that shall be due on the said four interest notes on the trial this cause Applied as a part payment and discharge so far of the said $1155 balance as aforesaid of the said amount and interest and aforesaid

Wherefore they pray Judgment whether the said plaintiff ought to have or maintain his aforesaid action against them as to the amount that shall be due on the

Page 46th trial of this cause on the said four promissory notes so given as aforesaid for a part of the said interest money

And the said defendants for a further plea in this behalf as to $335 of the said $1500 mentioned in said declaration of the said plaintiff say actio non because they say that before the making of said policy of insurance in said declaration mentioned to wit on the fifth day of March A.D. 1859 at the City of Aurora aforesaid in the County of Kane and State of Illinois it was corruptly and against the form of the Statute in such case made and provided agreed by and between the said plaintiff and one Delos. M. Conny (he being the person mentioned in said declaration by the name of D. M. Conny) that he the said plaintiff should lend and advance to the said Delos. M. Conny a certain sum of money to wit the sum of $1500, and that he the said plaintiff should forbear and give day of payment of the said sum of $1500 from the time of lending and advancing the same for the space of two years and for the forbearing and giving day of payment of the same as aforesaid the said Delos. M. Conny the said Delos. M. Conny should give

and pay to the said plaintiff at certain rate of interest per annum to wit twenty five per cent per annum on said $1500 making the whole sum of said interest at the said rate for said two years on the said $1500 amounts to $750 and for the securing the repayment of said sum of $1500 as to be lent and advanced as aforesaid two years from the banking and advancing thereof as aforesaid and the said interest money as hereinafter stated the said Delos N. Gormy should make execute and deliver to the said plaintiff an instrument of writing commonly called a Judgment note for said $1500 payable two years after the date thereof with interest at ten per cent per annum payable semi annually and for securing the balance of the said interest money that is to say $450 thereof the said Delos. N. Gormy should make and execute and deliver to the said plaintiff his (the said Delos. N. Gormy) four several instruments in writing commonly called Judgment notes each for the sum of $112 50/100 and to become due and payable respectively six months one year Eighteen months and two years after their respective dates with interest at ten per cent per annum after due

Page 48th And that also for further securing the repayment of the said sum of $1500 which should be specified in a Judgment note as aforesaid together with the interest to be specified in the same note as aforesaid the said Delos, M. Gorny and Ellen B. Gorny his wife should make execute and deliver to the said plaintiff the mortgage in said declaration mentioned

And the said defendants well that said insurance and in part performance of the said corrupt and unlawful agreement the said Delos, M. Gorny afterwards to wit on the said 5th day of March A D 1859 at the City of Aurora aforesaid made executed and delivered to the said plaintiff the first mentioned Judgment note for $1500. and made the same payable two years after the date thereof with interest at ten per cent per annum payable semi-annually and the same note purporting to be for value received and also then and there made executed and delivered to said plaintiff the said last mentioned four several Judgment notes each for the sum of $112,50/100 and to become due and payable respectively in 6 12 months One year Eighteen months and two years

after their respective dates with interest at ten per cent per annum after date each promissory note bearing date and promising on its face to be for value received

And the said defendant avers that on the 5th day of March aforesaid A D 1859 at the City of Omaha aforesaid the said Delos. N. Gormy made executed and delivered to the said plaintiff the said mortgage in manner and in form in part performance of said agreement aforesaid and in manner and form in part performance of said corresponding and unlawful agreement the said plaintiff on the day and year last aforesaid and at the place last aforesaid did loan and advance to the said Delos. N. Gormy the sum of $1500

And the said defendants aver that the said rate of twenty per cent interest per annum on the said sum of $1500 exceeds the rate of ten per cent per annum contrary to the statute in such case made and provided

And the said defendants further aver that afterwards to wit on the 21st day of September A D 1859 at the City of Omaha aforesaid the said Delos. N. Gormy paid

plaintiff ought to have or maintain his aforesaid action against them as to the $335 of the said $1500 in which was paid as aforesaid

Montemy & Searle
Atty for defendant

Endorsed on the back as follows to wit

Hartford Fire
Insurance Company
vs
Geo M. Haddon

Plea

Filed March 23d 1861
J. G. Barr Clerk
Montemy & Searle atty for defts

And afterwards to wit on the 23d day of March A D 1861 it being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in said cause and entered of record in said Court to wit

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George M. Haddan
vs
Hartford Fire
Insurance Company
} Assumpsit

This day come the plaintiff by Brown his attorney and enter his Demurrer herein to each of the special pleas by the defendants herein pleaded in which the defendants by Mantony & Eustis its Attorneys join and the Court being fully advised take time to consider

Note (the Demurrer cannot be found therefore a copy could not be given. (C. P. Johnston Clerk))

And afterwards to wit on the 30th day of March A D 1861 the same being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in this cause and entered of record in said Court to wit

George M. Haddan
vs
Hartford Fire
Insurance Company
} Assumpsit

This day came the plaintiff by Brown his attorney and the defen

=Ants by Montony and Scales their Attorneys and waive a Jury in this Cause and submit this Cause to the Court for trial to be taken up as a Justice Day

And afterwards to wit on the 1st day of April A D 1861 the same being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in this cause to wit and of record in said Court to Wit

George M. Maddox
vs
Aetna Fire Insurance Company
} Assumpsit

This day again come the parties to this cause and this cause coming on to be heard upon the plaintiffs demurrer to each of the special pleas by the defendant herein pleaded heretofore entered and the Court now being fully advised on said demurrer Thereupon it is considered by the Court that said plaintiff have and recover of said defendant his costs and charges by him about this demurrer expended and have execution therefor

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To which decision of the Court in sustaining said demurrer the Defendant at the time excepted

And afterwards to wit on the 3d day of April A D 1861 the same being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in this cause and entries of record in said Court to wit

George M. Hadden
vs
Hartford Fire Insurance Company
} Assumpsit

This day came the parties to this suit by their attorneys and this cause having been heretofore duly submitted to the Court for trial and the Court having heard the evidence adduced and not being fully advised by consent of the respective parties made in open Court the Court take the same under advisement until Saturday at 2 Oclock P. M. this day ment of the Court to be entered as of the present Term and with the same right to either party and with the same force and effect as if entered in Term time

And afterwards to wit on the 13th day of April A D 1861 (entered as per adjournment of Court and order of the Court as of the March Term A D 1861) the following and other proceedings were had in this cause and entries of record in said Court to wit

George M. Haddon
vs
Hartford Fire Insurance Company } Assumpsit

This day came the parties to this suit by their respective Attorneys and this cause having been heretofore at the March Term A D 1861 of this Court Submitted to the Court for trial and heard and the same having been taken under advisement by the Court and by agreement of the parties the Judgment of the Court to be entered as of the March Term 1861 with all the rights to either party as if entered in term time and the Court now being fully advised finds the issues joined in favor of the plaintiff and assess his damages to the sum of Fifteen Hundred and Twenty Two Dollars and fifty cents

Whereupon it is considered by the Court that said plaintiff have and recover of said defendant his damages of Fifteen Hundred and Twenty Two Dollars and Fifty Cents in form aforesaid assessed and also his costs and

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charge by him about this suit approved and have execution thereof

To which decision of the Court the defendants by their Attorneys at the time excepted and prayed an appeal in this cause to the Supreme Court of the State of Illinois It is ordered by the Court that the appeal be allowed on defendant entering into Bond in the Sum of Two Thousand Dollars with Jno. A. M. Buck as surety It is further ordered that defendants have thirty days to file their Bill of exception and thirty days to file their Bond herein

And afterwards to wit on the 13th day of May A D 1861 the following Appeal Bond now filed in the Clerks Office of said Court in said cause to wit

Know all men by these presents that we the Hartford Fire Insurance Company of Hartford of the State of Connecticut as principal and Jno. A. M. Buck as surety are held and firmly bound unto George. H. Haddan in the penal Sum of Two Thousand Dollars of lawful money of the United States to the payment of which we bind ourselves jointly severally

Pay 5% and Jointly by these presents

Given under our hands and seals this 6th day of May A D 1861

The Condition of the above obligation is such whereas the said George Mc. Hadden on the March Term A D 1861 of the Court of Common Pleas of the City of Aurora recovered Judgment against the said Hartford Fire Insurance Company for the sum of $1522.50 and costs of suit from which Judgment the said Hartford Fire Insurance Company have taken an Appeal to the Supreme Court of the State of Illinois Now if the said Hartford Fire Insurance Company shall duly prosecute their said Appeal and pay the said Judgment and all costs interest and damages in case the said Judgment shall be affirmed by the said Supreme Court then the above obligation to be void otherwise to remain in full force and effect

H. Huntington President (Seal)

J. A. W. Buck (Seal)

Endorsed on the Back as follows to Wit

Com Pleas Aurora

George Mc. Hadden

vs

Hartford Fire Insurance Co

Appeal Bond

Page 58th

Filed May 13th 1861
C. P. Johnston Clerk

And also on the Same day to wit on the 13th day of May A D 1861 the following bill of exceptions was filed in the Clerks Office of said Court in said cause to wit

George M. Hadden
vs
Hartford Fire
Insurance Company

In the Court of
Common Pleas of the
City of Aurora at the
March A D 1861

Be it remembered that at the trial of this cause at said term of said Court the said plaintiff in order to maintain the issue on his part offered to introduce in evidence a policy of Insurance executed by the said defendants to the plaintiff dated August 14th A D 1860 which is in the words figures following to wit

No. 62 $1500.00

The Hartford Fire Insurance Company
of Hartford Conn.

In consideration of Fifteen Dollars to them paid by the assured hereinafter named the receipt whereof is hereby acknowledged do insure George M. Hadden Esqr of

Against Loss or Damage by fire to the amount
of Fifteen Hundred (1500) Dollars
for the term of two (2) years on his mortgage
interest in the two wooden Dwelling houses
owned by D. N. Vorry Esq of Aurora Ill
situated on Lots Number one (1) and three (3)
original Town of Aurora

It is expressly agreed in case of loss the
assured shall assign to this Company an
interest in said mortgage to the extent of the
loss paid

For further particulars reference is
made to application and Survey No. 62 of
even number herewith on file with said
Company which is made a part of this Policy

And the Hartford Fire Insurance
Company above named for the consideration
aforesaid doth hereby promise and agree to make
good unto the said assured his executors admin-
-istrators and assigns all such immediate loss or
damage not exceeding in amount the sum insu
-red as shall happen by fire to the property
as above specified from the fourteenth day of
August one thousand eight hundred and sixty
(at noon) unto the fourteenth day of August one
thousand eight hundred and sixty two (at noon)
the said loss or damage to be estimated according
to the true and actual cash values of the property

Page 60th at the time the same shall happen and to be paid within sixty days after notice and proof thereof made by the assured at this office in conformity to the condition annexed to this policy Provided always and it is hereby declared that this Company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion insurrection riot or civil commotion or any military or usurped power or any loss by theft on or after a fire And provided further that in case the assured shall have already any other insurance against loss by fire on the property hereby insured and not notified to this Company and mentioned in or indorsed upon this policy then this insurance shall be void and of no effect

And if the assured or his assigns shall hereafter make any other insurance on the same property and shall with all reasonable diligence give notice thereof to this Company and have the same indorsed on this instrument or otherwise acknowledged by them in writing this Policy shall cease and be of no effect And if such insurance should be made upon the property hereby insured with the same or some already insured should in the opinion of the said Hartford Fire Insurance Company amount to an over insurance said Company reserve to themselves the right of cancelling this Policy by paying to the assured the unexpired premiums pro rata And in

Case of any other insurance upon the property
hereby insured whether prior or subsequent to the
date of this Policy the assured shall not in case
of loss or damage be entitled to demand or re-
-ver of this company any greater proportion of the
loss or damage sustained than the amount hereby
insured shall bear to the whole amount insured
on said property And it is agreed and declar-
-ed 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 any trade business
or vocation denominated hazardous or extra hazard-
-ous or specified in the memorandum of
special hazards in terms and conditions annex-
-ed to this Policy or for the purpose of storing
using or vending therein any of the articles goods
or merchandise in the terms or conditions of
-said denominated hazardous or extra hazard-
-ous or included in memorandum of special
hazards unless herein otherwise specially provi-
-ded for or hereafter agreed to by this Company
in writing and added or indorsed upon this
Policy then and from thenceforth so long as
the same shall be so appropriated applied
used or occupied these presents shall cease
and be of no force or effect And it is
moreover declared that this insurance is not-

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intended to apply to or cover any books of account written securities deeds or other evidences of title to lands nor to bonds bills notes or other evidences of debt nor money or bullion Once that this Policy is made and accepted in reference to the conditions hereto annexed which are to be construed and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for

This Policy shall not be valid until countersigned by the duly authorized agent of said Hartford Fire Insurance Company at Aurora Ills

In Witness whereof the Hartford Fire Insurance Company have caused these presents to be signed by their President and attested by their Secretary in the City of Hartford and State of Connecticut

Attested

Simeon C. Allyn Secretary

H. Huntington President

Countersigned at Aurora Ills
this 14th day of August 1860

Jno. A. M Buck Agent

Conditions of Insurance
Referred to in the body of the foregoing Policy

1st Applications for Insurance must specify the construction and materials of the building to be

insured or containing the property to be insured by whom occupied whether as a private dwelling or how otherwise its situation with respect to contiguous buildings and their construction as to materials and whether any manufacturing is carried on within or about and as relates to the insurance of goods or merchandise the application must state whether or not they are of the description denominated hazardous extra hazardous or included in the memorandum of special hazards And a false description by the assured of a building or of its contents or omission to make known any fact material to the risk or an over valuation shall render absolutely void a policy issuing upon such description or valuation And if any survey or description of the property herein insured is referred to in this policy such survey plan or description shall be deemed and taken to be a part and portion of such policy and a warranty on the part of the assured If the insurance is effected either by the original form policy or by a renewal thereof the risk shall be increased by any means whatever within the control of the assured or if such building or premises shall become vacant and be unoccupied at any time during the term of this policy or be 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

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If during the insurance the risk be increased by the erection of buildings or by the use or occupation of neighboring or otherwise or if from any other cause the Company shall so elect it shall be optional with Company to terminate the insurance after notice given to the assured or his representative of their intention to do so in which case the company will upon a ratable proportion of the premium

2 No insurance whether original or continued shall be considered as binding until the actual payment of the premium by the assured to the Company or its Agent

3 Property held in trust or on commission must be insured as such otherwise the policy will not cover such property and in case of loss the name of the ~~parties~~ respective owners shall be set forth in the preliminary proofs of such loss together with their respective interests therein certified by them By property held in trust is intended property held under deed of trust or under appointment of a court of law or property held as collateral security in which latter case this company shall be liable only to the extent of the interest of the assured in such property goods in storage must be separately and specifically insured If the interest in the property to be insured be a leasehold

interest or other interest not absolute it must be so represented to the Company and expressed in the policy in writing otherwise the insurance shall be void

4 Policies of insurance subscribed by this Company shall not be assignable either before or after loss without the consent of the Company expressed by indorsement made thereon In case of assignment without consent whether of the whole policy or of any interest in it the liability of the Company in virtue of such policy shall thereafter cease And in case of any sale transfer or change of title in property insured by this Company or of any individual interest therein such insurance shall be void and cease And the entry of a foreclosure of mortgage or the levy of an execution shall be deemed an alienation of the property in case of claim for loss or damage on a policy assigned when there is no actual sale or transfer of the property insured proofs of loss shall be made by the assured in conformity with conditions of this policy in like manner as if no assignment had been made otherwise this policy in like manner as if no assignment had been made otherwise this policy shall be void and of no force or effect whatever and all liability on the part of this Company shall cease

Page 66 the 15 In case of fire or loss or damage thereby or of exposure or loss or damage thereby it shall be the duty of the insured to use their best endeavors for saving preserving the property and if they shall fail so to do this company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect And it is mutually understood that there can be no abandonment to insurers of the subject insured This company will not be liable for loss or damage caused by lightning except that which shall result from fire that may ensue therefrom nor for any loss either by fire or otherwise occasioned by the explosion of a steam boiler or occasioned by explosion of gunpowder or any other explosive substance The keeping of gunpowder phosphorus and saltpetre for sale or on storage upon or in the premises insured or the lightning of the same by camphene spirit gas or burning fluid or any other inflamable liquid without written permission for the same in this policy shall render it void

6 Jewels Jewelry precious stones watches gold medals musical instruments (musical instruments in dwelling house excepted) printing presses scientific instruments printing prints engra

=wings statuary & sculptures curiosities cast
ma models are not included in any
insurance unless particularly specified in
the policy

7 All persons insured by this company sus
=taining loss or damage by fire shall forth
=with give notice thereof to the company
or its agent as soon after as possible
shall deliver a particular account of such
loss or damage signed with their own hand
=s and they shall accompany the same
with their oath or affirmation declaring
the said account to be true and just
showing also whether any and what other
insurance has been made on the same property
giving a copy of the written portion of the
policy in this company and of all other
policies upon the same property what was
the whole cash value of the subject insured
what was their interest therein in what general
(as to the trade manufactory merchandise
or otherwise) the building insured or containing
the subject insured and the several parts
thereof were occupied at the time of the loss
and who where the occupants of said build
=ing and when and how the fire originated
=ated so far as they know or believe
They shall also produce a certificate under
the hand and seal of a magistrate Notary

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Public or commissioner of deeds (most contig
nous to the place of the fire and not concerned
in the loss as a creditor or otherwise or related
to the insured or sufferers) stating that he has
examined the circumstances attending the fire
loss or damage alleged and that he is acquain
=ted with the Character and circumstances of the
insured and that he verily believes that he
she or they have by misfortune and without
fraud or evil practice sustained loss and
damage on the subject insured to the amount
which such magistrate Notary public or
commissioner of deeds shall certify. When
merchandize or other personal property is part
=ially 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
separating the damaged from the undamaged
merchandize or other personal property and
shall cause a list or inventory of the whole
to be made naming the Quantity and
cost of each kind The amount of damage
shall then be ascertained by the examination
and appraisal of each article by disinterested
Appraisers mutually agreed upon whose writ
=ten report in writing shall form a part
of the proofs agreed to be furnished by the
claimant one half of the appraisers fee to be
paid by the insured and the insured shall

of required submit to her examination
made oath by the Agent or Attorney of the Com-
pany and answer all questions touching his
her or their knowledge of anything relating to
such loss or damage or to their claim there-
upon and subscribe such examination
the same being reduced to writing And when-
ever required the insured shall produce and
exhibit his her or their books of account bills
other vouchers to the insured or their Agent
at the office of this Company in support
of his her or their claim and permit extra
cts or copies thereof to be made and shall
also produce certified copies of any bills or
invoices of property destroyed or damaged
the originals of which may have been lost
mislaid or destroyed and shall also exhibit
to any person named by the Company and
shall permit to be examined by them any
property damaged or which loss is claimed
or any property saved which was insured
by this policy And until such proof
declarations and certificates are produced
and such appraisals and examination of
property permitted by the claimant the loss
~~thereon~~ shall not be payable All frauds or
false swearing shall cause a forfeiture of all
claims on the insured and shall be a full
bar to all remedies against the insured on
this policy

Page 70th 8th Re-insurance for any other insurance company to be on the basis of joint liability with said company and in no event will this Company be liable for a sum greater than such proportion as the sum hereby re-insured bears to the whole sum insured on the property by the Company re-insured and in case of loss this company to pay their pro rata proportion at the same time manner and form as the Company re-insured

9 Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved and the proof received at the office and in case difference shall arise touching any loss or damage after proof thereof has been received in due form it may be submitted to the Judgment of Arbitrators indifferently chosen whose award in writing shall be binding on the parties In case of any loss 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 goodness and to rebuild or repair the building or buildings within a reasonable time giving notice of their intention so to do within thirty days after having received the proofs of loss required by the seventh article of these conditions

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10) Insurance now made may be continued for such further term as may be agreed on the premium thereof to be paid and a renewal receipt being given for the same And it shall be considered as continuing under the original representations 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 and if at any time or before the time of renewing any policy of insurance on property when the risk has been increased by the erection of buildings or by the use occupation or vacation of the premises insured or by the neighboring premises the assured shall fail to give information thereof said policy and renewal shall be void and of no effect

11 When property insured by this company is damaged by removal from a building in which it is exposed to loss by fire said damage shall be borne by the insurer and insurers pro rata in the proportion that the whole insurance bears to the whole value of the property insured of which proof in due form shall be made by the claimant

Page 72 (12) The company will not be answerable for any loss arising from the use of fires in buildings unprovided with good and substantial stone or brick chimneys 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

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

Class 9 Hazards

Risks are classed not hazardous hazard-ous and extra hazardous

Not Hazardous Staple foreign dry goods in packages and Staple Domestic dry goods in stores where no hazardous merchandise is kept—and household furniture in dwelling houses may be insured at 5 cents per $100 in addition to the rate of the building

Hazardous The following trade and occupa-tions goods wares and Merchandise are deemed hazardous and subject the building and all its contents to an additional charge of 10 cents per $100 Any one China or earthen-ware or glass ware or plate glass in boxes crates or casks fire crackers in packages flax in bales grass stock gutta Percha manu-factured hat ironing & trimming or pressing hay pressed in bundles hemp in bales India rubber manufactured manilla grass in bales oil sail matting sea-grass matting sisal grass in bales Spirits-tous liquors sugars sulphur tallow wine dealers stock (not including wine in glass unpacked)

The following are considered hazardous on account of their liability to damage

Page 74th and are charged 10 cents per $100 in addition to but do not increase the rates of building they are both and the branches (stocks of) and printing by hand power coffee cotton batting and wadding dry goods (general stocks of) flour feed and fertilizers in packages hardware and cutlery tinware and leather indigo bottling glassware in boxes metals (in bars rods pig or sheets) paints ground in oil paper hangings paper in reams potash new spices tailors stock and ready made clothing teas and threshed grain tin or sheet iron or copper wire wine in casks wire in glass packages window or plate glass in boxes and generally all other stocks of merchandise (in building where the fire heat is not used for manufacturing) not elsewhere enumerated

Extra Hazardous the following trades and occupations goods wares and merchandise are deemed extra hazardous and subject the building and all its contents to an additional rate of 25 cents per $100 they are not to apothecaries stock bone boy and ivory boy making basket bleaching or matting basket seller stock boy repairing brass tinning or working brush makers stock cabinet makers stock carving china china ware or glass ware or bottling glasses with

packing or unpacking chocolate materials
Colouring stock copper plate printing or
=on tin bale cotton bagging & rope daguerreotyp
=ing drugs (imparts stock without inflammable
acids or phosphorus) essential oils eating house
or refreshing gilding gutta percha goods
gutta percha goods gun making or repair
=ing hat finishing (with use of fire heat to
steam and block the bodies) india rubber goods
lifeboat bottling lithographing manilla grass
unpacked invoices manufacturing music
=al instrument materials stock oatmeal in
bale printing stock perfumery stock pitch
pitching and puttying pocket book
making porter house printing of newspapers
and engravings rags in packages rosin
ship chandlers spirits of turpentine tar tin
or sheet iron or copper working turning of
wood turpentine umbrella making upholstery
manufacturing varnish wooden ware sellers
stock and wool

The following are considered extra hazardous
on account of their great liability to damage
and are charged 20 cents per $100 in addition
to but do not increase the rate of the build
=ing they are artificial flowers bookseller stock
cabinet ware China glass or earthen ware
unpacked confectionery stock daguerreotyp
=e stock furs unpacked fur any goods jewelry

Page 76th

stock (compressed) stock liquor in glass unpacked looking glasses unpacked millinery stock musical instruments and printing machine needles optical and mathematical instrument makers stock pictures and prints precious stone product book makers stock silversmiths stock silver and plated ware stock glass goods stationers stock toy shop keepers stock watchmakers stock and tools window or plate glass unpacked and wine in glass unpacked

Memorandums of Special Hazards

Acids (nitric sulphuric muriatic and other acids) Camphy (ignition) Cabinet bark mills bleaching works blacksmithing block and pump making book binders boot and shoe brass founders brewers brick yards with kilns brush manufactories Cabinet makers shops Chair makers shops Carpenters shops Candle manufactories Camphine or oil colourmen shops with large Copper and spirit mills Chemical laboratories Coach makers shops comb manufactories Confectionary manufactories Coopers shops Cork cutters Cotton mills Cotton presses Cotton unpacking Distilling establishments Dyeing establishments Drug grist stores (wholesale) Dying and spirit mills Other fur dressing establishments Floor Cloth manufactories Spring

manufactories fulling mills flax manufactories
gas manufactories glass manufactories gun
manufactories grist and flouring mills
gun manufactories hat manufactories
hay manufactories house building and repairing
hemp manufactured hay presses hemp manufac
-tories hotels ink manufactories iron foundries
ivory black and lamp black manufactories
lamp manufacturing lime yards and stores
lime unslaked livery stables lumber yards
looking glass and picture frame manufac
-tories machine shops mahogany yards malt
houses metal mills musical instrument manu
-factories oil cloth manufactories oil cloth
-ing manufactories oil mills and manufac
-tories Omnibus stables plating plated ware
manufactories packing buildings and yards
paper mills paper hanging manufactories
percussion cap manufactories performing manu
-factories planing and grooving or moulding
mills printing & books and job printing
pork houses print-works rolling mills rope
and cordage manufactories rag and junk
shop stocks Safes (iron) manufactories stone
manufactories ship building and repairing
saw mills soap manufactories silversmiths
manufactories spirit gas manufactories and
spirit gas on sale stables stone yards steam
-boats steam engines in use tobacco manu
-factories type and stereotype foundries

Page 7 & 8th

tallow melting establishments tanneries
taverns timber yards wood mills wheel
-wright shops and generally all mills and
manufactoring establishments and all trades
and occupations requiring the use of fire
heat—not before enumerated

The following are not insured at any rate
of premium viz brimstone works distillers
-ies flax mills gunpowder oil boiling houses
oakum factories pianofortes or other
scenic paintings patent leather manufac
-tories sash and blind factories snuff
mills steam planing mills tar boiling
houses theatres turpentine manufactories
varnish makers steam saw mills sugar
refineries and india rubber factories

Plate Glass doors or windows when the glass
one of the dimensions of three feet square
or more are subject to an extra premium
and must be separately and specifically
insured

Linen and privies also stone furniture
and fixtures must be separately and specif
-ically insured

Page 7 pt. Endorsed on the back as follows to wit

Incorporated 1810 Capital $500,000 Charter perpetual

Directors

H. Huntington Charles. Bonnell John Allyn
Albert Day Henry Kinney John. P. Brad
James. Goodwin Calvin Day Charles J. Bun

Jims. C. Allyn Secretary H. Huntington Pres't
C. C. Lyman Apistatns Secretary Wm. W. Bowers Attorney

D. Alexander General agent for the western and south western States Columbus Ohio
John Lenhard Apistant agent for the western and south western States Columbus Ohio

J. A. R. Bush Agent at Anna Ill

No 62

Hartford Fire Insurance Company
Hartford Conn
to
George. M. Hadden
Anna Ill

$1500. Premium $15.00
Policy 1.00
Stamp .50
$16.50

Expires Aug 14th 1862

Pays 80th. To which the defendants then and there objected because of variance between the instrument declared on and the one offered to be introduced in evidence as aforesaid which objections the Court overruled and allowed said plaintiff to read the same in evidence and the second count in the declaration to which decision of the said Court the said defendant then and there excepted The due execution of the writing aforesaid by the defendants was admitted by the defendants counsel at the time the same was offered in proof as aforesaid

The plaintiff offered to introduce in evidence a certain mortgage executed and acknowledged by Delos. M. Young and wife and note signed by said Delos. M. Young mortgage and note bearing date March 5th. 1859 which are in the words and figures following to wit

This Indenture made this Fifth day of March in the year of Our Lord one thousand eight hundred and fifty nine Between Delos M. Young and Ellen. E. Young his wife of Concord Merrimack Co. N.H. party of the first part and George W. Nesmith of the same place party of the second part Whereas the said party of the first is justly indebted to the said party of the second part in the sum of Fifteen hundred Dollars secured to be paid by a certain Judgment note bearing date the day and year above stated for

the sum of fifteen hundred dollars and no
payable in two years from date with ten pe
cent interest. Interest to be paid annu
The privilege of paying in one year or any time
is given to the said party of the first part
Now Therefore This Indenture witnesseth that
said party of the first part for the better secur
the payment of the money aforesaid with interes
thereon according to the tenor and effect of said
Judgment note above mentioned Doth also
in consideration of the further sum of One dollar
to them in hand paid by the said party of the
second part at the delivery of these presents the
the receipt whereof is hereby acknowledged have
granted bargained sold and conveyed and
by these presents do grant bargain sell and con
vey unto the said party of the second part his
heirs and assigns forever all the following lot
piece or parcel of land situated in the County
of Rome and State of Illinois
And in the City of Anna and are lots One
(1) Two (2) and Three (3) in Block Number
fourteen (14) as recorded in the Recorders office of
Rome County Illinois
To Have and to hold the same together with
all and singular the tenements hereditaments
privileges and appurtenances thereunto belong
ing or in anywise appertaining and also all the
estate interest and claim whatsoever in law
as well as in equity which the party of the first

part have in and to the premises hereby convey=ed unto the said party of the second part his heirs and assigns and to their only proper use benefit and behoof

Provided Always and these presents are upon this express condition that if the said party of the first part his heirs executors or administrators shall well and truly pay or cause to be paid to the said party of the second part his heirs executors administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned Judgment note according to the true intent and meaning thereof then and in that case these presents and every thing herein shall be absolutely null and void But it is further provided and agreed that if default be made in the payment of said Judgment Note either of principal or interest on the days whereon the same shall become due and payable the whole of said principal and interest secured by said Judgment Note in this mortgage mentioned shall thereupon become immediately due and payable and this mortgage may be immediately foreclosed at the suit of the same by said party of the second part his heirs executors administrators or assigns or the said party of the second part his heirs executors administrators or assigns after publishing a notice in a newspaper printed in the City

of Anson Knox County Ills twenty days before the day of such Sale may sell the said premises and all right and equity of redemption of the party of the first part therein to and assigns thereon at Public Auction at the door of post office in Anson to the highest bidder for cash at the time mentioned in such notice And the said party of the first part hereby specially covenants and agrees to and with said party of the second part to waive his right of equity and redemption and further agrees that he will neither assert or claim any such right or a sale of the property mentioned herein by virtue of this mortgage And the said party of the second part to make execute and deliver to the purchaser or purchasers thereof a deed or deeds for the premises so sold and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises also the principal and interest due on said judgment anything herein or in said note contained to the contrary notwithstanding

In Witness whereof the party of the first have hereunto set their hands and seals the day and year first above written

Signed sealed and delivered in presence of

D. M. Conroy (Seal)

Ellen B. Conroy (Seal)

Page 84th

State of Illinois }
County of Rock } ss

I Jno. H. Fitch a Justice of the peace in and for said County in the state aforesaid do hereby certify that Delos. N. Young and Ellen, B. Young his wife who are personally known to me as the same persons whose names are subscribed to the within deed appeared before me this day in person and acknowledged that they executed and delivered said instrument of writing as their free and voluntary act for the uses and purposes therein set forth

And the said Ellen, B. Young wife of the said Delos. N. Young having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of said instrument of writing having been by me fully made known and explained to her acknowledged that she had fully and voluntarily executed the same and relinquished her dower and all other right title and interest in and to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same

Given under my hand and seal this 5th day of March A D 1859

Jno. H. Fitch J. P. (Seal)

Page 85 Endorsed on the back as follows to wit

7512

Mortgage

D. N. Gormy & Wife

to

George. M. Hadden

No

State of Illinois
Lime County } ss

This instrument was filed for record on the 10th day of March A.D. 1859 at 10 o'clock A.M. and duly recorded in Book 61 at Page 69

P.P.S.B. Wright
Clerk of Circuit Court
Ex Officio Recorder

The following is a true copy of the Judgment note

$1500, Aurora March 5 1859

Two years after date for value received I promise to pay to George M. Hadden or order Fifteen Hundred Dollars with interest at ten per cent per annum, payable semi annually

D. N. Gormy

Know all Men by these Presents that I, D. N. Gormy am justly indebted to George M. Hadden upon a certain promissory note

Page 86th

bearing even date herewith for the sum of Fifteen Hundred Dollars with interest at the rate of ten per cent Semi annum and due two years after date Now therefore in consideration of the premises I do hereby make constitute and appoint C. D. Day or any attorney of any Court of Record to be - true and lawful attorney irrevocably for me and in my name place and stead to appear in any Court of Record in term time or in vacation or before any Justice of the Peace in any of the States or Territories of the United States at any time from and after becoming due to waive the service of process and confess Judgment - in favor of said Geo. M. Hadden or his assigns or assignee upon the said note for the above sum or for so much as appears to be due according to the tenor and effect of said Note and interest thereon to the day of entry of such Judgment together with all costs and Thirty Dollars attorneys and also to file a cognovit for the amount that may be due with an agreement therein that no writ of error or appeal shall be prosecuted upon the Judgment entered by virtue thereof nor any bill in equity filed to interfere in any manner with the execution of said Judgment and to release all errors that may intervene in the entering up of said Judgment ~~and to consent to the reversal thereof~~

Page 8 of attorneys or ~~&~~ assigning the execution thereon and also consent to immediate execution upon such Judgment & hereby ratifying and confirming all that my said Attorney may do by virtue hereof

In Witness my hand and seal this 5th day of March A D 1860

in presence of D. M. Conry [Seal]

Endorsed on the back as follows to wit

Dels. M. Conry Note $1000.

given March 5th 1859 and due two years from date with 10 per ct int. int to be paid Semi Annually

Rec'd the interest on the within note up to March 5th 1860

Geo. Mc. Hadden

Rec'd the interest on the within note up to Sept 5th 1860

Geo. Mc. Hadden

To which the defendants then and there objected because of the variance between the description of the premises contained in the said Mortgage and the description of the premises contained in either count in the declaration and also because the description in the mortgage was incorrect

Page 88th

and ambiguous and that the said mortgage was otherwise incompetent and inadmissable evidence but the Court after hearing the testimony of Delos. N. Young and Jas. A. N. Buck hereinafter Stated overruled the said objections and admitted the evidence so offered To which decision of the Court the defendants then and there excepted The execution of said mortgage by said Delos. N. Young and Wife and the signature of said Delos N. Young to said note was admitted by defendants Counsel when they were offered in evidence The plaintiff then called Delos N. Young who being duly sworn testified that the mortgage introduced in evidence in this Cause was the same mortgage given by him and covered the lot upon which his house stood which was burned November 5th 1860 which said house stood on Lot one (1) in block Fourteen (14) in the original town of Canon to which testimony the said defendants objected But this Court overruled the objections and admitted the evidence To which decisions of said Court the said defendants then and there excepted

The Plaintiff called Jas. A. N. Buck who testified that the mortgage offered as aforesaid in evidence in this Case was the mortgage interest in said house which was

insured by the defendants in the said policy and that the house which was burned was one of the houses so insured To which evidence of the said Bro the said defendants objected Which the Court overruled the objection and it was admitted by the Court To which decision of the said Court the said defendants excepted

Mr Platt Howell on the part of the plaintiff testified that he knew the dwelling house located on the premises described in said declaration that the house burned was worth about $2400 and the other house not burnt was worth about $600 and that the former house was burned November 5th 1860 and stood on lot One in Block 14 in the original town of Aurora to which evidence the defendants objected which objection the Court overruled and admitted the evidence To which decision of the Court the defendant then excepted.

On Cross Examination witness testified that he was acquainted with the lands in the City of Aurora that he had been assessor for several years in the town of Aurora since City of Aurora that there was

Page 90th begun and on the 5th day of March A D 1869 and since then several and vari-ous plats of lands in the City of Aurora recorded in the recorders office of Kane County Illinois which contained lots desc-ribed as lots one two and three in Block No. fourteen in each of said plats

Jno. A. W. Burke was recalled by the plaintiff and testified that he was at the time of taking the policy of insurance in the declaration in this suit referred to the duly authorized agent of said company in the City of Aurora and that he has been since and is now such agent that the said policy was duly signed by the president of said Company and attested by the secr-etary and countersigned by Jno. A. W. Burke as agent of said Company that the said Company was duly notified after loss on said policy at the time and in the manner alleged in said declaration and that all the preliminary proofs were duly put in in the time and manner stated in the said declaration Counsel for plaintiff asked Witness did not the company agree to pay the loss on the ground of usury alleged in the mortgage

Witness answered yes that

he witness had stated to plaintiff that that was all the reason the Company assigned for not paying the loss and that he has never stated to plaintiff that there was any other defence to said policy

On Cross Examination he testified that at the time of communicating to the company the loss the witness informed them that Conroy had notified him as the agent of said company that there was usury in the mortgage and that he Conroy would not pay it and that at that time that was the only defence that he witness knew of to the plaintiffs mortgage or policy that he had no authority from them to waive any legal defence that they might have to a suit on the policy

The plaintiff then offered to assign an interest in said mortgage and note to the amount of said $1500 to the said defendants

The plaintiff here rested his Case

Page 92 Delos, N. Gorry was then called by the Defendants and testified that he paid on the mortgage $445 he borrowed March 5th 1859 for the term of two years $1500, of the plaintiff and gave the said note and mortgage introduced evidence by the plaintiff and that he agreed to pay the plaintiff for the use of the same twenty five per cent per annum that the $1500 in was made to draw interest at ten per cent per annum and the balance to wit fifteen per cent making in all the sum of $450 was put into four different notes payable in 6. 12. 18. 24 months after their respective dates and dated March 5th 1859 and that he paid the plaintiff on said notes interest September 21st 1859 $10, January 14th 1860, $10; July 23d 1860 $1.60 October 1860, $45 which evidence was objected to at the time it was offered but admitted subject to objection by the Court and the witness testified that the value of the house burned was about $3000 and that the other was worth $1000, and that on the premises described in the declaration there were more than two houses

On Cross Examination witness testified that he was mistaken as to the

Amount he had paid on said mortgage It was $345 instead of $445 that he paid the $345 as follows to wit $100 about Sept 21st 1859 $160 23d July 1860. $150 which was the ten per cent interest expressed on the face of the note and mortgage & One and the balance of the $160 was costs made by advertising said premises for sale which witness agreed to pay $75 in October 1860 which was the ten per cent due on the face of said note and mortgage and $10 on the 14th of January 1860 making the $345 the $100 was paid on one of the notes given for the 15 per cent as aforesaid the prepayment of $160, and $75, were made on the interest that accrued on the face of the said $1000 note and mortgage The said note was the one the mortgage was given to secure there was but one house burned on lot one in said Declaration mentioned

The Counsel for plaintiff asked Witness whether he was the owner of the house that was burned to which question the defendants objected The Court overruled the objection and admitted the witness to answer to answer the question To which decision of the Court the defendants then and there excepted

The Hartford Fire Insurance Company
appellants
vs
George M. Hadden
appellee.

Supreme Court
of the State of Illinois
Third Grand Division
April Term A.D. 1882
appeal

It is hereby stipulated by and on behalf of the parties to the above entitled suit that the necessity of the seal of the pledge of the record hereto being attached to his signature to the Bill of Exceptions is hereby expressly waived and also the necessity of said seal of the said pledge, being duly copied in the record in this cause and certified to by the clerk hereof, is also expressly hereby waived - And it is further stipulated that this Court shall take and treat the Bill of Exceptions and the copy thereof in this record as if the same had been duly signed and sealed in apt time and such seal had been duly copied in the record and certified to by the clerk

Below

Morton & Scales
Attorneys for Appellants
& W Brown one
of Attys for appellee
Nathan W. Standett
& Cumberland Appellee.
May 1. 1862.

Ross Doc —
Appellants
vs
George W. Standett
Appellee
—
Stipulation —
Filed May 1. 1862
S. Sclater
Clerk

9th Witness answered I was the owner of the house that was burned the house in suit was ~~[illegible]~~ I did not own

Which was all the evidence offered or introduced by either party and inasmuch as the foregoing evidence and matters do not otherwise appear of record the defendants pray the Court to sign and seal this their bill of exceptions which is done

B. L. Parks
Judge of the Court of Common Pleas of the City of Adams

Endorsed on the back as follows to wit

George M. Hadden
vs
Western Fire Insurance Company

Filed May 13th 1861
C. P. Johnston
Clerk

Mentzer & Evans
Attys for Defendants

to the amount of $1520.50.

Fifthly. The Court Erred in sustaining each of the plaintiff's (below) demurrers to the defendant (below) Special pleas.

Sixthly - That the judgment is contrary to law

Seventhly. That the judgment is contrary to the evidence.

Eighthly. That the judgment is contrary to the law and evidence.

Ninthly. That the Court had no jurisdiction or authority in law or in fact to render the judgment in vacation.

Mowbray & Sanders
Attorneys for appellants

And hereupon comes the said George M. Holden by his attorneys, and (saving all exceptions as well to the completeness of said record as for insufficient abstracts and briefs), says that there is no error either in the record and proceedings aforesaid or in the matters aforesaid, above assigned for error, and prays that the judgment aforesaid in form aforesaid given, may be in all things affirmed &c.

Arthur W. Mindett Esq
Charles C. Bonney
for appellee

Com 25th Mar Term

Geo. M. Haddon

vs

Hartford, Fire

Insurance Company

Copy of Record

Filed April 23. 1862

L. Leland

Clerk

Fee

220 Folios @ 22,00

Certificate 35

$ 22.35