

No. 14518

Supreme Court of Illinois

New England Fire & Marine
Ins. Co.

vs.

Weimore et al

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 190

New Eng

14518

1863

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Supreme Court of Illinois
April Term AD 1868
Third Grand Division

New England Fire & Marine
Insurance Company
vs
George N. Wetmore et al.

appeal from
Knox.

The argument of N. T. H. atty for appnts.

This was an action on a Policy of Ins.
issued by appellant N. Wetmore & Co. &
a Renewal Receipt to Stewart & Scroggs
as stated in the abstract in this case

In the 1st place I claim that the Policy
& Renewal Receipt were made & accepted
in reference to the conditions annexed as
stated in the Policy. and by the Conditions.
Condition No. 12, the Application & Survey
& description of the property are a part
of the Policy and a warranty on the
part of the assured.

The Dfs. below were not entitled to recover
in this action. because they had no interest
in the property at the time of the fire
The declaration avers that Stewart &

Scroggs at the time of the fire now the
entire owners of notes, mortgages & interest
insured. The evidence shows that fact the
Plffs. could not recover because they had
aliened their interest in the property insured.
If the proof does not show that fact the
evidence does not support the declarat-
ion

The Plffs below were not entitled to recover
because they did not have any interest in the
Policy, Renewal Receipt, or Property Insured
at the time of the fire. The Policy issued to
Hutchinson & Long expired the 17th March
1860 at noon. on the 19th day of March 1860
a Renewal Receipt was issued to John C. Stewart
& Joseph C. Scroggs for one year from 17th
March 1860, to 17th March 1861. at noon. This
Renewal Receipt to Stewart & Scroggs was
a new and independent contract with
them. They paid the money and the Receipt
was given in their name, it was not a
renewal of the Policy to Hutchinson & Long
but a Renewal of the Policy with Stewart & Scroggs
in their name for their benefit. The old Policy
was only in force as to the terms & was changed
in the Renewal Receipt but not as to the parties.
The new parties Stewart & Scroggs took upon

themselves in their own name the terms of
the old Policy for one year. Wetmore & Yong
no longer had any interest in the Policy
or property insured, their Policy as to them
was dead before the fire occurred, they never
renewed it. it never was renewed in their
name or even for their benefit. and before this
Renewal by Stewart & Scroggs the old Policy
was assigned by them A Stewart & Scroggs.
also the note & Mortgage interest & they in
possession of the property. by their tenants. Wetmore's
& Yong were released at the time of the change
in the contract in the name of Stewart & Scroggs
from all liability and the Company no longer
looked to Wetmore & Yong but to Stewart &
Scroggs with whom they had made a new
contract. and who were the insured not only
in fact but in name and this is shown by
the conduct of the parties by the letter of the
President of the Ins. Co. on p. 11 of abstract.
which was introduced by the Pffs. below he
speaks of having insured S. & S. meaning
Stewart & Scroggs. and on the same page of
the record a letter of Jefferson Farmer showing
that he so regarded it. also in the letter of
G. C. Humphreys the atty. of Pffs. below he speaks
of it in the same way as the claim of Stewart
& Scroggs. and says they have commenced

Stut. as does also the tender or attempted
tender of assignments by them & the Co. show
that both parties so regarded & understood
the Contract. Which the Contract itself also
proves. and for these reasons the only party
that can recover is Stewart & Sonogg. if
there can be a recovery at all. as all these
questions were saved upon the trial & we are
entitled to take advantage here.

Another objection that this Policy was originally
issued to Stewart & Sonogg the Wetmore &
Long jointly and Wetmore before the fire
had assigned to Long the Policy & the notes
& mortgages hence there could be no recovery
in his name if at all. ^{even if} ~~but the same~~ Long
interest, although the assignments were made
~~in the name of~~ with the Consent of the Co.
for the reason that a joint interest cannot
be sustained by proof of a separate interest.

Another objection to the Recovery in this case
on the Policy. that the Property was incurred
as a "boarding house". and during the existence
of the Policy under the renewal receipt a part of
the premises were used as a stable for six
months a horse kept in it. & corn & hay
for feed for the horse and a part of it

used as a Saloon in which beer & Whisky
were sold for a long time. but not so
 used and occupied at the time of the
 fire. but was then vacant. It will be
 contended that as the building was vacant
 at the time of the fire. ~~there is no liability~~
 the Policy or Renewal was not void
 but in full force. and they will claim
 this on account of a provision in the Policy
 providing as they claim that altho the
 risk has been increased and the building
 occupied for & used for purposes denominat-
-ed hazardous, Extra hazardous or Specifi-
-ed in the Memorandum of Special hazards
 in conditions annexed to the Policy, that
 it is only void while it is so occupied
 and reverts as soon as the property ceases
 to be used for that purpose. The provision
 reads as follows. So far as it relates to the
 subject except for storing of articles and if
 " Premises should at any time after the making
 " of Policy during its continuance be used for
 " purposes of carrying on any trade, business
 " or vocation therein denominated hazardous
 " Extra hazardous, or Specified in the Memoran-
 " -dum of Special hazards in conditions annex-
 " -ed to Policy, excepting therein provided for
 " Explicitly or agreed to by Deft. in writing added

" Is or endorsed on Policy, then & from thence -
" forward so long as the same should be appro-
" priated applied or used for that purpose then
" these presents therein shall cease to be of no force
or effect. Now all that this provision in
this Policy provides is that while it is
or used the policy is void and does
not provide that when they cease to
use the property afterwards ^{in that way, but in} accordance
with the Policy that it is revived, and
I maintain that if the Policy is once
void it is ~~always~~ void on account of
the risk being changed as at once it is
always void and cannot be revived again
without a subsequent agreement of the
parties to it that the assured are not by
this agreement entitled to insure property
as to Boarding houses and use it as
a Stable or Saloon without the assent
of the Insurers. according to the terms &
Condition of the Policy. And increased the
risk at all times without their ~~knowledge~~
or consent. or violate the terms of the
Policy a day and revive it tomorrow.
If this doctrine could be established it
would be absolutely necessary for these
corporations who are said to be obliged
to possess the quality of omnipresence
in order to protect themselves against fraud

and this provision is a common provision
in Policies of Insurance, but this is not the
Construction to be put upon this provision in
this policy, if it stood alone without any
other provision in the Conditions annexed
to the policy, as is held in a case cited in
my brief in this case 3^d of Selden R. 535
where this point with many others bearing
upon this case are decided and this direct
question is there decided & Exactly in point.
and they hold that it is immaterial what-
ever the risk continued up to the time of the
fire or not. Which is the doctrine held in
all of the authorities if the risk is changed
the policy is void whether it is the cause
of, or contributes to the fire or not. The Conditions
attached to a Policy are to be construed
with the policy to find out the meaning of
the parties to it. In Article 1st of Conditions
it is provided If any person insuring property
in this office should omit to make known
any fact or feature in the risk which in-
creased the hazards of the same after
Insurance effected either by original Policy
or renewal thereof such buildings or
premises shall be occupied in any way
so as to render the risk more hazardous
than at the time of insuring & if the

the risk be increased by any means ~~whatsoever~~.
Within the control of the assured, such ~~increases~~
- once shall be void, and in the Memor-
- andum of Special hazards as the Court
will see Stable are named and for
which the Co. asked a higher rate of
insurance, and a list of which increases
the hazard or risk. The evidence shows
clearly, & the witness is uncontradicted
that ^{part of} the building was used for a stable
for six months during the existence of
the renewal receipt also as a Saloon &
Bar & Whiskey sold there, the evidence does
not so clearly show a sale of Whiskey per-
- aps. Saloon is not named in the list of
hazards but. "Eating houses", "Refectories",
"Porter Houses" & "Spiritous liquors" are in the
list of Hazards under the list of ~~hazards~~
1st class. under which I think a Saloon
would come. for this reason if no other
this case must be reversed unless the
Court are prepared to say that a man
insured on a ~~board~~ Boarding house can
use it as a stable for six months and
keep hay & corn for a horse & horse in it
if he can thus violate the contract &
change the risk & not avoid the policy
that can he ^{not} do. and what protection

is there Insurance Companies and
~~the~~ What sort of faith between parties
 is a Contract an Oath & hold parties
 if they can be violated by one party with
 impunity and enforced upon the other.
 Such is not the law & cannot be held
 upon this question of the Change of
 the risk, this Case must be reversed
 it ^{is} plain & admit of a doubt.

Next. at the time of the issuing of the
 Renewal Receipt, did Stewart & Scroggs
 have any interest in the Mortgage, & note
 if not there was & could be no Renewal
 that was valid or binding and the Policy
 was dead, for they were the parties whom
 it was issued, if the Evidence of Joseph
 C. Scroggs is not & be admitted being
incompetent as a witness as he clearly
 is then there is no Evidence to show that
 at the time of the issuing of the Renewal
 Receipt & then the Note & Mortgage
 or any interest had been assigned &
 he does not state that there was any
 written assignment, & the first & only
 written assignment is dated July
 7th 1860. & the Renewal Receipt

is dated March 19th 1860 three or
4 months ~~before~~ the Receipt was
given before the assignment was made
upon this question the law is clear that
unless they had an interest at the time,
the renewal & insurance is void upon
which I have cited authorities in my
brief in this case, then there is no
evidence in the case to show any
previous assignment & no evidence of
the contents of any previous written
assignment if there was one, even
with the evidence of Scroggs. then
is no evidence of any contract
either verbal or written with Scroggs
no evidence showing the consideration or
terms of the contract and the only
evidence of the assignment of Saml
A Stewart & Scroggs is the one dated
July 7th 1860 in P. 5 of Abstract.
then if this be true the Policy had
run out, was dead & the Renewal to
Stewart & Scroggs was void the Reffs
below were not entitled to recover.

Again the survey & description of the
property as a boarding house is a part
of the Policy & a Warranty that it is
to be so used and occupied unless

it is changed by the agreement of
the Parties & a different premium
paid according to the rules of the Co.
Conditions of Policy Article 1. 11. & 12.
for this reason this Policy & Renewal
is void. No change was made with
the Co, no notice given of the change
of the risk, no higher premium paid,
but the boarding house turned into
a Stable & Saloon without the knowledge
or consent of the Co. and a clear violation
of the Policy & Contract between the parties.

Another objection urged is that the
Court erred in allowing Joseph C.
Sergeant to be sworn as a witness in
this Cause this is clearly error. he
was clearly interested in the result of
this suit. in the part of the Plffs. below
who introduced him. The Plffs. below
in their declaration that at the time of the
fire he & Stewart had the whole interest
in both mortgage & Policy, the Evidence
shows that the Receipt was issued to him
& Stewart. in their names by this Company
& the proof of loss was made by him & Stewart
jointly & they both swear that they ^{made} ~~had~~ the

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Whole insured interest in the property at
the time of the fire, that the Policy was
assigned to ~~them~~ John Stewart & that
he & Stewart were the only persons the
losers & the full amt. insured under
this Policy. Now his oath he states that
they made the proof of loss & that he
was interested at the time of the fire
and the Evidence further shows that
they were the persons who claimed
this money of the Ins. Co. by the com-
= pendence in Evidence up to the time of
the commencement of this suit. if they
recovered in this suit they J. C. Stewart
& Joseph B. Siroggs got the money if
they did not & the Plff. did not recover
in this suit they did not get the money
unless they could recover in their own
names. they are the sole parties in
interest at all events. and if the Plffs.
did not recover in this suit they would
be to the Expense of bringing a suit in
their own names if they could recover
at all. and if they could not recover
in this suit. or now in their own names
they loose the whole amt. and as far
as the amt. of money is concerned
in this suit it runs with withrip a

a question of life or death for the only persons that can recover under the law are the persons that were interested in the property at the time of the fire and if he was not directly interested in the property & policy or had transferred or aliened to any one that interest could not be recovered at all. upon this point I have cited authorities in my brief which clearly show that S. C. Stewart & Co were not a competent witness in this case. And for this reason the ^{judgt.} ~~case~~ must be reversed.

The Court Erred in giving the Instructions for the Juries below. in Page 11 of Abstract instructing that the hitching of horses in the building would not make the building more hazardous under the Condition of Insurance whp in addition it was used as a ~~Common~~ Common Stable & thereby brought within the Condition of the Policy. in the 1st Place there was no evidence ^{in the case} ~~tending~~ in the Court tending to show that there was a simple hitching of the horses in the building, in the next place it was not necessary to prove that it was a Common Stable.

for the list of hazards names "Stable" whether
private or Common are within the conditions
and named "living" - "Omnibus Stable" which are
not a private but a public or Common Stable
are also named in ^{the list of hazards}
a Common Stable is one used in Common
by more than one person. a private stable
is a name ~~name~~ own private stable and it
is now the less a "Stable" ^{as} named in the
condition, the instruction was erroneous &
was calculated to mislead the Jury & did
mislead the Jury for it was upon a vital
question in issue upon the Evidence. We
clearly proved it was used as a "Stable"
but not a Common Stable. as they must
have understood it. but they could not under
the Evidence say it was not used as a
stable for about six months.

The Court would ^{not} allow the Defts below
to withdraw their Pleas. 11 Dec 19. This
application was made before the Case was
called for trial. & there is no question about
the right the law is clear and it was a
question of right & not in the discretion
of the Court to refuse it. therefore cause of
Error.

The Plffs. below offered in Evidence two assignments or what were claimed to be such & this Co. the 1st was dated Jan'y. 10th 1862. 2^d dated July 15th 1861. Attached & set out in Page 4 of Abstract. the 1st one was made by Stewart & Scroggs to the New England Fire Marine Insurance Company this was not this name. They are a corporation with a corporate name and this not being in their corporate name, was not an assignment & thus & they were not bound to take it. it has no tenor of an assignment to them. it stated that it was on a Schoon insured by them & they never insured it as a Schoon. it was also conditional as to costs & for that reason they were not bound to take it.

The 2^d assignment was in the corporate name but in other respects the same objections apply to it. besides the objection that it was tendered to the agent of the Company & there is no Evidence that he was authorized to accept it.

The Plffs. below were by the terms of the policy & Conditions before sent bound to tender an unconditional assignment except as to amt. & the Ins. Co. before they could bring this Suit. as stated & referred to in the brief in this case.

why
not were Stewart & Scroggs bound to assign
to the Co. before suit. if this suit is brought
in the name of the proper offrs. below. but
if Petrone & Long had such a ligab intent
in the policy ^{to keep} to maintain this suit for the
benefit of Stewart & Scroggs. in this name, then
they were bound to join with them in an
assignment to this Company in the proper
name, corporate name of the Company.
this has not been done. the Court erred in
permitting the offrs. below to introduce the assign-
ments in evidence. the Evidence further shows
that an assignment was sent to the agent
Furner. made to "New England Insurance
Company". which was no assignment to
them for the above reason it was signed by
Stewart & Scroggs only. They might just as
well make their assignments in the
name of some private person as not
to assign to us in the corporate name
and it would have been just as good
it assigned no interest to the Insurance
Company & was improper evidence for the
jury. but the two were permitted by the Court
to go to the jury as sufficient which had its
effect upon their verdict for the reason that
the one made in the proper name of the
Company. was insufficiently tendered to any

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Another objection which I urge is that the application and conditions of the Policy are a part of the contract & Policy are so declared in this case and that the Court erred in permitting the Plffs. below to introduce the Policy without the application and conditions attached it being only a part of the contract and not showing the whole contract between the parties and being objected to for this reason below at the time, and for this error we are entitled to a reversal.

The declaration was insufficient and we are entitled to take advantage of it in arrest, in this they did not aver that the premium had not been used or appropriated or used for any business denominated hazardous or extra hazardous or specified in the Memorandum of special hazards in the terms & conditions annexed to said Policy. but only aver that it was not so used or appropriated at the time of the fire

The Court Erred in permitting the Plffs
below to introduce the appraisal of the
amt. of damages agreement without the
statement and attached proof of loss &
application for this appointment, it being a
part of the same transaction and by the
Conditions annexed to Policy being made upon the
request of either party. Condition # 10. of Policy
& no award or assessment shall be binding unless
made in accordance with its provisions &
no Court can decide whether it is until they
have the statement & application, there is not
anything of the kind in this case there is
no evidence of any written request to the
Co. or by either party, hence the evidence
was illegal and unprovided for & improper
and not binding upon the Insurance Co.
And unless this is the case the company
are not bound to pay in Co & go. And
then there is nothing to show that they could
not agree about the damages, unless there
was a difference about the amt. of damages
and a written request by one of the parties
there could be no award or appraisal
And for these reasons it was admitted
in evidence improper - An Agent could
not bind the Co in violation of the conditions
of the Policy without the consent of the Co.

Which must be shown by the Evidence -
And again this assessment which is
offered in Evidence is in relation to property
saved in a damaged condition & is
the A. g. t. but the Evidence shows in this
Case that the building was entirely
destroyed & not saved in a damaged
condition and hence it was not in relation
to the same property and if it was it was
not proper Evidence for this reason
the Evidence was improperly admitted
for it does not support the declaration
of the A. g. t. for this property was not saved
in a damaged condition as all the Evidence
shows & the A. g. t. was only in relation to
such -

And the Plffs further contend that the
Court Erred in sustaining the Demurr
to said ~~pleas~~ Pleas - 2^d 3^d 4th 5th & 6th

The Court Erred in admitting in Evidence
the Renewal Receipt to Stewart & Scroggs
because they had no interest ⁱⁿ the property
insured at the time of the issuing of
said Receipt & that on 19th March 1860

And the assignment to them by Long
July 7th 1866 2 or 4 months afterwards
And that is the only Evidence of any
Assignment that exists. & anything in this
Case any tangible Contract.

And for the reasons set forth in this
Argument heretofore, the Court would in
refusing as a new trial & arrest & in
rendering Judgment for App. below And
the ~~Assignment~~ should be reversed
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A. Tyler Atty for
Appellant.

1406
New England Free
Marine Ins. Co.
ms

Geo H. Putnam
et. al.

Argument of
Sp full out

Filed May 5. 1863
Kelana
Clk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

NEW ENGLAND FIRE AND MARINE
INSURANCE COMPANY

vs.

GEORGE H. WETMORE *et al.*, for use of
JOHN McFARLAND.

} *Appeal from Knox.*

APPELLANTS' BRIEF AND AUTHORITIES.

1st. This was an action of assumpsit commenced by *George H. Wetmore, Mary A. Wetmore and Charles Long* vs. the appellants, on a policy of insurance issued by them, March 19th, 1859, for one year, to *Mary A. Wetmore and Charles Long*, and on a *renewal receipt* issued to *Stewart & Scroggs*, March 19th, 1860, insuring them as assignees of John Riggin, who was a mortgagee of lot 3, in block 52, Galesburg, Ill., as a *dwelling house, with some boarders*. The notes and mortgage were assigned by Mary A. Wetmore and George H. Wetmore, her husband, to Charles Long, with consent of the company, March 25th, 1859, and policy was assigned by Wetmores to Long with consent of the company, March 31st, 1859. Long assigned policy to John C. Stewart and Joseph C. Scroggs, January 26th, 1860, with consent of the company. Long assigned all his interest in notes and mortgage to *Stewart & Scroggs*. *Assignment in evidence is dated July 7th, 1860*. They aver in declaration that at the time of the fire *John C. Stewart and Joseph C. Scroggs* were the owners of the entire interest in the notes, mortgage, re-

renewal receipt and policy. Property was burned between 9th and 10th March, 1860.

2d. The plaintiffs below had no interest in the property insured, policy, or *renewal receipt at the time of the fire*, and could not recover in this action.

Angel on Ins. P. 258, 9-60.
22d Ill. R. 272.
3d Denio R. 301.
4th Hill R. 187.
16th Peters R. 503.
3d Fairf. R. 44.
26 Conn. R. 165.

3d. The assignee of notes, mortgage and policy may bring suit in their own name.

Angel on Ins. p. 259, 60.
3d Metc. (Mass.) R. p. 66.
12 Mass. R. p. 281.
3d Md. R. p. 354.
5 Wend. R. p. 200.
8 Cush. R. p. 131.
8 Mass. R. p. 515.

4th. *The renewal receipt to Stewart & Scroggs was a new, valid and independent contract with them. If they had an interest in property at the time of the issuing the receipt, they must recover, if at all, in their own names.*

Angel on Ins. p. 259, 60.
3d Metc. R. p. 66.
8 Mass. R. 515.
2d Wood & Minot's R. 472.
5th Wend. R. p. 200.
12th Mass. R. p. 281.

5th. The Wetmores, having a joint interest in the policy and property at the time of its issuing, *having sold all their interest to Long, cannot maintain this action jointly with him.*

Angel on Ins. p. 443, Sect. 375.
2d Comst. N. Y. R. p. 210.
3d Denio R. 301.

The assignment of the notes and mortgage *alienated* all interest of the parties assigning, both legal and equitable.

23d Ill. p. 30.

6th. The *conditions annexed* to the policy and *application* are a part of the policy, and the stipulations in the policy are considered *express warranties*, and if the *risk is changed* the *policy is void*, and it is not material that the fact complained of did not exist at the time of the fire.

2 Comst. N. Y. R. 210.

6 Cowen R. 676.

3d Kent's Com. p. 373.

1st Wash. Cir. Ct. R. 419.

"Conditions A," Policy No. 1, 11, 12.

7 Wend. R. 270.

6 Wend. R. 494.

Angel on Ins. p. 184-5.

3d Selden's R. 530.

2d Hall's N. Y. R. 589.

3d Comst. N. Y. R. 124.

7th. If Stewart & Scroggs had no interest in the notes and mortgage at the time of the issuing of the *renewal receipt*, the policy is void.

Angel on Ins. p. 101-2, 258.

2d Comst. N. Y. R. 210.

3d Kent. 371.

3d Denio R. 301.

8th. The insurance of the property as a *boarding house*, and the renewal to *Stewart & Scroggs*, *without any change*, was a *warranty* that the property should not be used as a *stable and saloon*, for which the contract of insurance was a higher rate, and which, by the conditions of insurance, was denominated "*hazardous*" and named in the "*memorandum of special hazards*."

3d Harrison's R. p. 480.

6 Wend. R. 623.

2d Denio N. Y. R. 75.

1st Green N. J. R. 110.

3d Hill's R. 501.

2 Wood & Minot's R. p. 472.

9th. The Court erred in permitting *Joseph C. Scroggs* to testify as a witness. *He was interested in the result of this suit.*

1st Starkie Ev. p. 107, note "M," p. 108, 109, and note "A."
1st Greenleaf Ev. sect. 390, p. 498, sect. 295.
1 Gilm. R. 388.

10th. The Court erred in giving the instruction for the plaintiffs below. "*Memorandum of special hazards,*" "*stables,*" "*omnibus stables,*" and *livery stables.*

11th. The Court erred in refusing to let defendants withdraw their pleas.

11 Ill. R. 19.

12th. The Court erred in refusing *non-suit and motion for a new trial, in arrest of judgment.*

13th. The Court permitted the plaintiffs below to introduce in evidence *an assignment by Stewart & Scroggs to the New England Fire Marine Insurance Company; while that was not the company, and was no assignment to the company insuring.*

14th. The assignment of *Stewart & Scroggs*, of January 10th, 1862, was on a *boarding house and saloon insured by company, as stated in the assignment, and defendants below never insured as such, and were not bound to accept such an assignment to another company.*

15th. The policy and conditions attached required that an *unconditional assignment* of the interest of the assured should be assigned to the insurance company before the plaintiffs below could recover on the policy; and no such assignment was made,

but was refused. *Conditions of Policy No. 14, and Farmers Evidence, page No. 11.*

16th. In order to maintain this action the plaintiffs below must have tendered to the company *an assignment unconditional, except as to amount of interest, in its corporate name, before the commencement of this suit. Conditions of Policy No. 14, page 9, Abstract.*

A. TYLER,
Attorney for Appellant.

¹⁸⁰
N. E. F. & M. Inc. Co.

and

Geo. N. Wetmore et al.

~~Abstract~~

Pluff. Bump &
Pomer. —

Index May 4, 1853

L. L. Carter
MR

NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY,
vs.
GEORGE H. WETMORE, et. al.

STATE OF ILLINOIS,
In the Supreme Court,
April Term, A D., 1863.

APPEAL FROM KNOX.

ABSTRACT.

2 This was an action of assumpsit commenced in the Knox Circuit Court at February Term, A. D., 1862, for \$1000
damages for loss by fire, of property insured, was tried before a Jury at the June Term, 1862. Motion for new trial and
76 in arrest of Judgment overruled, and Judgment rendered for Plaintiffs for \$623, after deducting the sum of \$10 remitted
by Plaintiffs, and for costs at the September Term, A. D., 1862.

DECLARATION IS AS FOLLOWS :

1st Count charges, that on March 17th, 1859, M. A. Wetmore and Charles Long, were owners of two notes ex-ecuted
3 by Wm. H. Marvel to John Riggan, one for \$1000, one for \$375, both with interest, and dated November 6th, 1856, and
that Marvel mortgaged Lot 2 in Block 52 on West side of Depot street, in Galesburg, Ill., to secure the payment of said
notes, with others, that the mortgage also belonged to M. A. Wetmore and Long, and that Geo. H. Wetmore then and
ever since was the husband of M. A. Wetmore, and that March 19th, 1859, Defendant insured said Lot by Policy No. 2,
4 in consideration of \$9, paid by M. A. Wetmore and Long against loss by fire to amount of \$900, mortgage interest, as a
"boarding house," and Defendant agreed to make good to the insured, their executors, administrators, or "assigns" all loss
or damage, not exceeding amount insured, from 17th March, 1859, at 12 o'clock, noon, until 17th March, 1860, at 12 o'clock,
noon. Estimate of value to be cash value of property at the time of happening, and to be paid 60 days after due notice and
proof made by insured, and received at office of Defendant, in conformity to annexed conditions to policy : Provided
5 Defendant not liable for loss or damage by fire by means of invasion, insurrection, riot, civil commotion, any military or
usurped power, or loss by theft after fire ; and that, if the insured, or any person, with knowledge of insured, have exist-
ing during continuance of Policy, other insurance against loss by fire on property insured, and not consented to by De-
fendant in writing, and mentioned and endorsed on policy, or assured should make any attempt to defraud Defendant ;
policy to be void, and in case of other insurance prior or after date of policy, insured should not, if loss or damage, be en-
titled to any greater proportion of loss or damage than amount insured should bear to whole amount insured, and if
6 premises should at any time after the making of Policy, during its continuance be used for purpose of carrying on any
trade, business, or vocation therein denominated hazardous or extra hazardous, or specified in memorandum of special haz-
ards, in conditions annexed to policy, or storing therein articles, goods or merchandize in said terms or conditions denomi-
nated hazardous, extra hazardous, or included in memorandum of special hazards, excepting therein provided for specially
or agreed to by Defendant in writing, added to or endorsed on policy, then and from thenceforward, so long as the same should
be appropriated applied or used for that purpose, these presents therein should cease, and be of no force or effect. Insu-
rance not to cover Books of accounts, written securities, deeds, or other evidence of title to land, bonds, bills, notes or other
evidence of debt, money or bullion. Policy made and accepted in reference to the terms and conditions annexed. Policy
7 if not changed might be continued for further time as agreed upon, if the premium was paid and endorsed on policy, or
Receipt given for same ; and Policy not assignable without consent of Defendant in writing ; and if assigned or transferred
interest in premises without such consent, Policy void. Policy not valid unless countersigned by authorized
agent at Galesburg, Ill. Aver the agency of J. P. Dorman, Galesburg, and countersigning of Policy, declaration then sets
8 out conditions annexed to the policy. Plaintiffs aver that on the 31st March, 1859, M. A. Wetmore and G. W. Wetmore,
her husband, assigned all interest in policy to Charles Long, and consent of agent ; and that Long assigned to John C. Stew-
9 art and Joseph C. Scroggs, Policy January 26th, 1860, and consent of Company by agent to assignment, and delivery of
Policy to Parties to whom assigned ; and that March 25th, 1859, M. A. Wetmore and G. W. Wetmore, her husband, sold
20 assigned and delivered to Long interest in notes and mortgage, and Long, January 26th, 1860, sold, assigned and delivered
21 notes and mortgage to John C. Stewart and Joseph C. Scroggs, and on 19th March, 1860, said Stewart & Scroggs paid
J. P. Dorman, agent of Defendant, \$7.50, Premium on Six Hundred Dollars, for one year, and Dorman, agent, delivered to
Plaintiffs Receipt No. 5, called "renewal receipt," signed by President and Secretary and countersigned by agent, and being
premium on \$600, insured under Policy No. 2, and that Policy was continued in force for one year for benefit of Stewart
& Scroggs, from 17th March, 1860, to 17th March, 1861, at noon, on boarding house and saloon on said mortgage premises, and
23 that in the night between the 9th and 10th of March, about midnight, building without any fault of Plaintiffs, or Stewart &
Scroggs, was burnt, accidentally ; and that it was worth \$1422, and due on notes and mortgage \$1450 to Stewart & Scroggs
at time of Fire, and that they were the entire owners of said notes and mortgage and interest insured ; that Dorman, agent
of Defendant, was at fire of said "Boarding House ;" that March 18th, 1861, Stewart & Scroggs gave Dorman, an agent,
24 notice in writing of loss ; 29th March, 1861, delivered to Dorman particular account of loss, value of property insured,
by whom owned, duly signed and sworn to, and a certificate of Notary Public under the conditions, that notice, state-
25 ment, declaration, certificate and proof were satisfactory to Defendant ; that Defendants waived any and
all objections to imperfections, deficiencies in notice of loss. Account filed with them by Stewart &
Scroggs, and certificate of said notary. Fire not caused by explosion of any steam boiler, nor caused by
Camphine, Gunpowder, or any other explosive substance, nor by use of open lights in barns, or where shavings were made,
nor from having unsubstantial stone or brick chimneys, nor from a neglect or deviation from the laws or regulations of
policy, nor by invasions, insurrections, riot, or civil commotion, or of military or usurped power. That at the time said
26 boarding house was burned, it was vacant, that there was no other insurance on property ; that at the time of the fire the
building was not appropriated or used for any business denominated hazardous, extra hazardous, or specified in memoran-
dum of special hazards, in the terms and conditions annexed to said policy, nor for storing goods or articles denominated
hazardous, extra hazardous, or in memorandum of special hazards named ; not caused by lightning. That at request of
27 Defendant, with assent and concurrence of said Stewart & Scroggs, M. D. Billings and A. N. Carpenter, were chosen as
arbitrators to determine loss, and before commencement of suit did award and determine amount of loss at \$1000. That
amount of said insurance not paid although 60 days elapsed after making said award before suit commenced, nor have Defen-
dant rebuilt nor given notice to, although 60 days have elapsed since proof made and furnished Defendant. That on 15th
28 July 1861, Stewart and Scroggs executed and offered to deliver to said Dorman as agent of Defendant, an assignment of
\$600 of note and mortgage and decree with power to collect, and refused by said agent ; on 16th January, 1862, Stewart &
Scroggs executed and delivered to said Dorman full and absolute assignment, note mortgage and decree, with all right ;
that Defendant had notice of all and was requested to pay said sum of \$600.

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29 2d Count, Common Count for money received for use of Plaintiffs, and account started, and promise to pay, and
29 failure to pay.
30 Copy of Instrument sued on. Copy of Policy, conditions annexed and assignments, renewal Receipt, set out herea-
46 ter in Bill of exception.

The pleas were as follows :—

51 1st. General issue.

52 2d Plea to 1st count, that building insured was *described and insured* as a *dwelling in which boarders were kept* and
that it was occupied as a *Saloon and disorderly house and part as stable*.

53 3d Plea to 1st count, that Defendant requested and Plaintiff refused to assign interest insured after fire or so
much as would pay loss, except upon condition that Plaintiffs should not be called upon to pay any Court costs in ob-
54 taining decree.

4th Plea to 1st count, that Stewart & Scroggs at the time of giving the Renewed Receipt represented that they
were mortgagees, and that they were not.

55 5th Plea to 1st Count, at date of Policy and Renewed Receipt, it was Represented to Defendant that building in-
sured was *dwelling house* but that it was used as a *Restaurant and eating house* during the time and after the Renewed Re-
ceipt was issued.

56 6th Plea to 1st count, that the building after the issuing of the renewal receipt under control of Stewart & Scroggs
for one month, was used to store Gunpowder, Camphine, burning Fluid and Saltpeter, and burning fluid and camphine
was used for lights in building.

57 Plaintiffs took issue upon 1st Plea, Demurred to 2d, 3d, 4th, 5th, and 6th, Demurrer sustained.

65 Amended Pleas 1 and 2 filed and issue joined upon them.

1st Amended Plea, that Stewart & Scroggs were not the assignees of the mortgage interest at the time of the
issuing of the Renewed Receipt.

2d Amended Plea, avers that Stewart & Scroggs did not assign the mortgage interest in premises as averred in
Declaration.

65 Defendant moved the Court for leave to withdraw his pleas, motion refused.

Issue was joined on 1st plea, and 1st and 2d amended pleas, to the country, jury sworn.

80 The Plaintiffs, to maintain the issue on their part, offered in evidence two notes, mortgage from Wm. H. Marvel to
81 John Rikken. The 1st note dated November 6th, 1856, payable six months from date for \$375, six per cent interest from
date, with credit of \$165 November 15 1856, and endorsed on the back of said note is the following: "I hereby agree
"to guarantee the payment of the within note, Feb. 2d, 1857. JOHN RIGGEN."

"Received on the within notes all of the face and interest of the same up to the present date, save and except the
"sum of one one hundred and twenty-nine dollars and seventy-three cents, which is now due and remaining unpaid, Janu-
"ary 20, 1858, by the understanding of all parties. W. O. WATTS.

"Mary A. Wetmore, G. H. Wetmore.

82 2d Note is for \$1000, dated November 6th, 1856, payable 24 months after date, 6 per cent interest from date, 10 per
cent after due. On the back of said note is the following:

"Mar 10 '59. For value received I assign the within to M. A. Wetmore and Charles Long, with recourse on me,
JOHN RIGGEN.

"Mary A. Wetmore, G. H. Wetmore.

The mortgage is dated November 6th, 1856, executed by Wm. H. Marvel to John Rikken, on lot No. 3 in block No,
83 52 in Galesburg, Ill. in usual form of warrant mortgage, for the payment of \$2000, with interest as follows: \$250 with
84 use January 1st 1857; \$370 with use May, 6th, 1857, \$375 with use November 6th, 1857, \$1000 with use 6th day of
85 November 1858, according to 4 certain notes, dated November 6th, 1856. Properly acknowledged.

The following assignments on the back of said mortgage :—

86 STATE OF ILLINOIS, } GALESBURG, MARCH
KNOX COUNTY } 10TH 1859.

"For value received I hereby assign and set over to M. A. Wetmore and Charles Long all my right title and interest
"I have and hold to the within mortgage, but in foreclosing the with mortgage the assignor is to be from costs,

JOHN RIGGEN,

her
ANNA X RIGGEN.
mark

STATE OF ILLINOIS, } SS
KNOX COUNTY. }

"For value received, we hereby sell and assign the within mortgage and premises therein described, and all our
"right and title thereto to Charles L. Long, who is the assignee intended in the above assignment of John Rikken.
Galesburg, March 25, 1859.

G. H. WETMORE,
MARY A. WETMORE."

The last assignment was properly acknowledged.

87 Defendants objected to all the above evidence and excepted.

88 The Plaintiffs next offered in evidence the policy of insurance, without the application, Defendants objected, Court
allowed it to go in evidence. Policy as follows :—

"New England Fire and Marine Insurance Company, of Hartford Conn., No. 2. \$9.00. By this policy of Insurance,
"the New England fire and Marine Insurance Company in consideration of nine dollars to them in hand paid by the
89 "assured hereafter named, the receipt whereof is hereby acknowledged, Do Insure M. A. Wetmore, and Charles Long of
"Galesburg, Knox county Illinois, against loss or damage by fire to the amount of \$9.00 for the period of one year, their
"mortgage interest on a boarding house on the west side of Depot street, in said Galesburg on lot 3 and block 52, and
"the said company for the consideration aforesaid do hereby promise and agree to make good unto the said assured, their
"executors administrators and assigns, all such loss or damage not exceeding in amount the sum insured, as shall happen
"by fire to the property as above specified, from the seventeenth day of March, one thousand eight hundred and fifty-nine
"(at 12 o'clock noon,) until the seventeenth day of March one thousand eight hundred and sixty (at 12 o'clock at noon),
"the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the
"same shall happen, and to be paid within sixty days after due notice and proof thereof, made by the insured and received
"at this office in conformity to the conditions annexed to this policy, provided always, and it is hereby declared, that this
"Company shall not be liable to make good any loss or damage by fire which may happen or take place by
"means of invasion, insurrection, riot, civil commotion, any military or usurped power, or any loss

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"by theft, at or after a fire, and provided further, that in case the assured or any other persons or parties, with the knowledge of the assured, shall have existing, during the continuance of this Policy, any other insurance against loss by fire on the property hereby insured, and not consented to by this company in writing, and mentioned in or endorsed upon this policy, or if the assured shall make any attempt to defraud the company, then this insurance shall be void, and of no effect, and in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises, shall at any time after the making of, and during the time this Policy would otherwise continue in force, 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 this policy, or for the purpose of storing therein any of the articles, goods, or merchandise in the same terms and conditions denominated hazardous, extra hazardous, or included in the memorandum of special hazards, except herein specially provided for or hereafter agreed to by this Company in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease, and be of no force or effect. And it is moreover agreed and declared that this insurance is not intended to apply to or cover any Books of account, written securities, deeds, or other evidence of title to land, nor to mortgages, bonds, bills, notes or other evidence of debt, nor to money or bullion. And that this Policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise especially provided for. This Insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefor is paid and endorsed on the policy, or Receipt given for same. The interest of the insured in this Policy is not assignable unless by consent of this company, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this Policy shall from thenceforth be void and of no effect. This policy shall not be valid until countersigned by the authorized agent of said New England Fire and Marine Insurance Company, at Galesburg, Ill. In Witness Whereof, The New England Fire and Marine Insurance Company have caused these presents to be signed by their President and attested by their Secretary, in the City of Hartford. N. M. WATERMAN, President.

GEO. D. JEWETT, Secretary.

Countersigned at Galesburg, this 19th day of March, 1859.

J. P. DORMAN, Agent.

Defendant objected to the giving in evidence the said Policy, without the application. Court overruled objection and permitted the same to go in Evidence. Defendant excepted.

Plaintiffs next offered in Evidence the assignment of Wetmore of Policy and consent of agent Dorman. Defendants objected. Court overruled objection, let the same in evidence. Defendant excepted. The assignment and consent of agent is as follows:

"For value received, I hereby transfer, assign and set over unto Charles Long and his assigns, all my title and interest in this Policy, and all advantage to be derived therefrom. Witness my hand and seal this 31st day of March, A. D., 1859.

M. A. WETMORE,
G. H. WETMORE."

"The New England Fire and Marine Insurance Company hereby consent that the interest of M. A. Wetmore in the within Policy subject to all the conditions and terms therein mentioned and referred to, be assigned to Charles Long-Galesburg, March 31st, 1859.

J. P. DORMAN, Agent."

Plaintiffs next offered and gave in evidence an agreement which admits J. P. Dorman agent at Galesburg, from time of issuing Policy to trial.

That Stewart & Scroggs 29th March, 1861, delivered a notice and proof of loss by fire of the building insured by Defendants. That Dorman, by rules of Company, consented to assignment of Policy by Long to Stewart & Scroggs.

That Books of Defendant in control of Dorman show date of assignment and consent of Defendant to it.

Plaintiffs next offered in evidence, Defendant objected, Court overruled objection and Plaintiffs read in evidence, Defendant excepted, a Renewal Receipt, as follows:

"NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY, OF HARTFORD, *Renewal Receipt No. 5, Galesburg Agency.*

"Received of Stewart & Scroggs seven 50-100 dollars, being the premium on Six hundred dollars insured on Policy "No. 2, which is hereby continued in force for one year, to-wit: from the 17th day of March, 1860, until the 17th day of March, 1861, at noon.

N. M. WATERMAN, President."

GEO. D. JEWETT, Secretary.

Countersigned at Galesburg, this 19th day of March, 1860.

J. P. DORMAN, Agent."

The Plaintiffs next offered in evidence as a witness, J. B. Boggs, who was sworn and testified that he knew the Marvell property on Lot 3 in Block 52, original town of Galesburg, situated on Depot street, I think South West continuation of Kellogg street, little North of East of the Bancroft House. I was at the fire a little after midnight between 9th and 10th of March, 1861; don't think the building was occupied; saw Dorman at the fire; building was wholly destroyed. I have passed building frequently. I recollect the proof of loss (the paper with proof of loss handed to witness) the signature and seal are mine.

Cross-examined. I think the building was on Depot street, would not swear positively to it; know the description of the property.

Plaintiffs next called A. N. Carpenter, who swore he knew the building; think it was on Depot street; know of the loss by fire. Building was North East of Bancroft House. I was called on to appraise property. I am a carpenter. Swore to appraisement. Billings and myself signed the award. I was requested to act by Dorman. Have not examined the property since. The Estimate in our award or estimate signed by us, is the amount we estimated it at.

Plaintiff then offered in evidence the agreement to appoint appraisers, the oath of appraisers and their assessment of damages, without the statement of loss and application for such appointment. Defendant objected to the evidence. Court overruled the objection, and let in the evidence. Defendant excepted. The agreement to appoint, oath of appraisers and their assessment of damages, is as follows:

"NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY OF HARTFORD, CONN. AGREEMENT 18.—It is hereby agreed by J. C. Stewart and J. C. Scroggs, of Galesburg, Illinois, of the one part, and the New England Fire and Marine Insurance Company, of Hartford, Conn., on the other part, that A. N. Carpenter and M. D. Billings, (together with a third person to be appointed by them, if necessary) shall appraise and estimate at the true cash value the damage by fire to the property belonging to Stewart & Scroggs as specified in the accompanying schedule, which appraisement and esti-

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100 "mate by them, or any two of the n, shall be binding upon both parties, so far as regards such appraisalment, it being
"understood that this appraisalment is without reference to any other questions within the terms and conditions of the
"insurance, being so far only as regards the value of or damages to such property as may be found to have been saved in
"a damaged condition, which was insured by policy No. 2, with the said New England Fire and Marine Insurance Co.,
"of Hartford, Conn. Witness:

"STEWART & SCROGGS,
"J. FARMER, Gen'l. Agent."

STATE OF ILLINOIS, }
COUNTY OF KNOX, }

DECLARATION OF APPRAISERS.

"We, the undersigned, do solemnly swear that we will act with impartiality and fidelity in making an appraisalment
101 "and estimate of the damages to the property of Messrs. Stewart & Scroggs, insured by policy No. 2, in the New England
"Fire and Marine Insurance Company, of Hartford, and saved in a damaged condition, agreeable to the foregoing ap-
"pointment, and that we will return to the said New England Fire and Marine Insurance Company a true and perfect,
"and a just and conscientious appraisalment and estimate of damage on the same, according to the best of our knowledge
"skill and judgment.

"M. D. BILLINGS,"
"A. N. CARPENMER."

"Sworn and subscribed to before me this 23th day of March, A. D., 1861.

JOSIAS GRANT,
Notary Public."

"[L. S.]
"We, the undersigned, after a careful estimate of the value of the building owned by Stewart & Scroggs and burned
on the 9th inst., do make the costs of replacing the same to be, \$1000 00
And would deduct new for old, 333 33

\$666 67

"Making the actual loss by said burning to be six hundred and sixty-six and 67-100 dollars.

"M. D. BILLINGS,"
"A. N. CARPENTER."

102 Plaintiffs next swore L. Douglass. States that he, on the 16th January, 1862, in Galesburg, near McCoy's Bank,
made a tender of assignment of notes and mortgage by Stewart & Scroggs to Defendant, to Dorman agent of Defendant,
and on cross examination states that he did not know that he, Dorman, was authorized by Defendant to receive it for
Defendant.

Plaintiffs next offered in Evidence following assignment of Stewart & Scroggs to Defendant:

"In the Knox County Illinois Circuit, Bill in Chancery to foreclose Mortgage, Decree of Foreclosure, Ju - e 6th, 1860.

"Charles L. Long, Complainant,

"William H. Marvel, et. al., Defendants."

"In consideration of the sum of Six hundred dollars to us in hand paid, We, John C. Stewart and Joseph
103 "C. Scroggs, assignees of said Long of the above mentioned mortgage, and the notes it was given to secure, and of the
"decree made in said suit by said court at said term, do hereby assign, set over and transfer unto the New England Fire
"Marine Insurance Company, without recourse to us, the above named decree, mortgage and notes, and do hereby fully
"authorize and empower them to collect and receipt for the same, and to take such legal steps at their costs as may be neces-
"sary to collect the same, and we do also hereby assign to said Company all right which we may have to collect from any
"incorporation or individual any sum of money for or on account of the burning the boarding house and saloon, insured by
"said Company by policy No. 2, dated march 19th, 1859, and do authorize them to take such legal steps as may be neces-
"sary without expense to us to collect said last mentioned sums of money and to receipt for same. Witness our hands and
"seals this 10th day of January, 1862.

JOHN C. STEWART, [SEAL]

JOSEPH C. SCROGGS." [SEAL]

To the giving in evidence said assignment the Defendants objected, Court overruled objection and Defendants excepted.
104 Plaintiffs next offered in evidence an assignment from Stewart and Scroggs of the interest in notes and mortgage and
decree, same as above substantially, except date and party to whom made, it was dated 15th July 1861, and made to the
109 "New England fire and Marine Insurance Company". Defendants objected to the giving of said last assignment in evi-
dence. Court overuled objection and let in the assignment, in connection with J. Gales evidence, herein after set out, De-
fendants excepted. Signature was not denied to either of said assignments.

106 Plaintiffs next swore Josiah Gale, who stated: I have just read the assignment, a similar one was tendered to
Dorman about a year ago, Scroggs read it to him in my presence, my impression is it is a duplicate, cant say whether
Scroggs retained it or not. Cross examined, could not say positively whether it was the same paper or not, thought it
was.

Plaintiffs next swore Zimri Pond, who stated he knew George and Mary Wetmore, known them for five years, pass
and live together as husband and wife, have examined signatures on notes, mortgages and policy, and they are their
signatures.

107 Plaintiffs next called J. C. Scroggs, who was sworn on his voir dire, stated he had no interest at present in the result
of this suit, cant say when I parted with my interest, I did once have an interest in this insurance and property insured,
assigned my interest to the insurance company, think I assigned my interest to McFarland, cant say when I assigned my
interest to him, was equally interested with Stewart, assigned by writing, I think the first suit had then been commenced,
I had an interest in the property at the time of the fire, also in notes and mortgage, think I assigned notes and mortgage
to McFarland, I had an interest at the time of the fire, and when proof of loss was made. I never assigned my interest
in the policy to any one, never assigned my interest to any one else except the Insurance Company. We made the proof
of loss. Dont remember I ever told Farmer I was interested. Defendants objected to witness being sworn in chief and
testifying on account of interest in the result of the suit. Court overruled objection and let witness testify, Defendants
excepted, and J. C. Scroggs swore as follows: This was the policy assigned originally to us by Wetmore, I do not re-
member the exact date, assignment was in writing, dont know where it is, never made any search for it, know it was
108 in writing and attached to the policy, is torn off, assignment was made to Stewart and myself, I know that the notes
and mortgage were assigned to us by Long, I dont know whether any assignment was made in writing, dont remember
whether it was written, It was before the issuing of the "Renewal Receipt," I cannot state whether it was in writing or
not, I never had any conversation with Dorman about it. Before the assignment to us, Long had filed a Bill to foreclose,
and the suit went in his name to a decree, I served an assignment of our interest in said notes, mortgage and decree on

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108 Dorman, I remember the erasure and date, Mr. Gale was with me, the erasure in assignment was made while Gale was with me, it was served 15th July 1861, copy produced is the one served on Dorman.

109 Plaintiffs next swore Z. Cooley for the purpose of showing an alteration of an endorsement of credit on said note since the computation by master in the Foreclosure of said mortgage by the addition of the letter "s" to the word "note," he stated he was special master in said case, cannot say positively whether said "s" has been added since computation I made; did not notice it then; don't think it was there.

110 Plaintiffs then recalled J. C. Scroggs, and showed him an assignment from Long to Stewart & Scroggs, dated July 7th, 1860, he stated: I do not remember of seeing this assignment before, I recognize the signature of Long, it is his signature, the assignment was written by J. B. Boggs. We made the purchase from Long in January 1860, and the assignment made certainly not later than Feb. 1860. *Cross Examined.* I recognize the signature to this assignment, but don't remember of any such assignment being made to us. It is Long's hand writing.

111 Plaintiffs next recalled J. B. Boggs, stated that the assignment was made in my office and acknowledged before and 112 certified by me, Stewart was present and I think it was delivered to Stewart & Scroggs; that is the assignment; there was a prior agreement between Long and Stewart & Scroggs about the sale to them, which was destroyed, I think when this assignment was made.

G. C. Lanphere was sworn for Plaintiffs, and on examination of the assignment marked "G." Said he had had the paper over a year; received it from Stewart in May or June, 1861.

Plaintiffs then offered the assignment. Defendant objected. Court overruled objection and let in the assignment; Defendant excepted. The assignment is as follows substantially:

109 "KNOW ALL MEN BY THESE PRESENTS, that I, Charles L. Long, of Galesburg, Ill., assignee of mortgage of Wm. H. 110 "Marvel to John Riggan to secure payment of \$2000, dated Nov. 6th, 1856, in consideration of \$100 paid by Stewart & "Scroggs, receipt of which is acknowledged; grant and assign to Stewart & Scroggs, his heirs and assigns, the said "mortgage, the estate therein mentioned and debt secured thereby. To have and hold the same to said Stewart & Scroggs, "their heirs and assigns to them and their use forever, subject to redemption, according to law.

"Dated July 7, 1860.

CHARLES LONG, [SEAL.]

111 Acknowledged before J. B. Boggs, Notary Public, July 7th, 1860; by Charles L. Long.

112 Plaintiffs here rested. Defendant moved the Court for non-suit, because Evidence did not show any cause of action.

113 Court overruled motion. Defendant excepted.

Defendant to maintain the issue on its part, offered in evidence the application for Policy with conditions attached to Policy; which were given in evidence without objection, which are as follows:

MEW ENGLAND FIRE & MARINE INSURANCE CO.
Of Hartford, Conn.

No.

Survey of dwelling in the City Galesburg, County of Knox, and State of Illinois.

The estimated value of each *Building* and of *Personal Property*, and the amount to be insured on each, must be stated separately. When Property is contained in two or more buildings, the value and amount to be insured on each must be stated separately. When insurance is wanted on Personal Property, the same description of the building is required as if insurance is wanted on the building.

114 APPLICATION of of Galesburg, for insurance against loss or damage by fire, by the NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY, in the sum of Nine Hundred Dollars, on the property specified: the value of the property being estimated by the Applicant.

	Sum to be Insured.	Valuation.	Rate
On their Mortgage Interest,.....	\$.....	\$.....	\$.....
On Building,.....	\$900.....	\$1,300.....	\$1.....
On.....	\$.....	\$.....	\$.....
On.....	\$.....	\$.....	\$.....

The Applicant will answer the following questions, and sign the same, as a description of the premises on which the insurance will be predicated:

SURVEY OF PREMISES.

1. BUILDING—Where situated? Street and No.? Is it stone, brick, or wood? How many stories high? When built? 1. On Depot Street, (west side). Wood. Part 1 part $1\frac{1}{2}$ story. 1856-7.
2. WALLS—Are the division walls of brick? Are they entire? Do they rise above the roof? 2. Situated on lot 3, block 52, in Galesburg.
3. ROOF—What is it covered with? Is there a scuttle, and stairs to it? 3. Shingle. No.
4. Has it a lightning rod? If so, how high does it rise above the roof? Does it descend into the ground three feet? 4.
- 115 5. What fuel is used? How are the ashes disposed of? 5. Coal and Wood. Thrown out.
6. Are the stoves and pipes properly secured, and will you engage to keep them so? 6. Yes. Yes.
7. Do the pipes enter a chimney? And is it built from the ground? Do pipes pass thro' wood partitions or floors? If so, how secured? 7. Yes. No. Yes. Tin Ventilator.
8. What material is used for light? 8. Fluid.
9. For what purpose is the building used? How many tenants? 9. Dwelling. Keep some boarders.
2 tenants now—is not to be long.
10. Distance and materials of other buildings within 100 feet of the one to be insured? And how occupied? 10. South 50 feet is a $1\frac{1}{2}$ story building, not used. East 5 rods is a 1 story warehouse
11. What other insurance is there upon the property, and at what office? 11. None.
- 110 12. Is the property mortgaged? And to what amount? Is there any insurance by the mortgagee? 12. The Mortgage interest is what we insure.
13. Is any other party interested in the property? 13. Yes.
14. Have you ever suffered loss of property by fire? If so, were you insured, and in what office? 14. No.
15. What are the facilities for extinguishing fires in the town? 15. Engine. Hook and Ladder Company.
[If the risk be on Merchandise.]
16. How often do you take an inventory? What was the date and amount of the last? 16.
17. Are friction matches kept for sale? If so, are they kept in metal or earthen vessels and not exposing other property? It is agreed that Phosphorus is not be kept on the premises. 17. No.

117 And the said applicant hereby covenants and agrees to and with said Company, that the foregoing is a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, and value of the property to be insured, so far as the same are known to the applicant and are material to the risk.

Dated March 17th, 1859.

M. A. WETMORE & CHARLEY LONG, Applicant.

For 12 months at 1 cents, premium \$9.

[ Make a diagram of the premises on the other side of this sheet.]

QUESTIONS TO BE ANSWERED BY AGENT.

1. Has this Company any other insurance }
within 100 feet, if so, how much, and for } ...No.....
whom? }
2. Have these premises, to your knowledge ever }
been on fire? } ...No.....
3. Please give any other information relating to }
the risk, that we should know. }

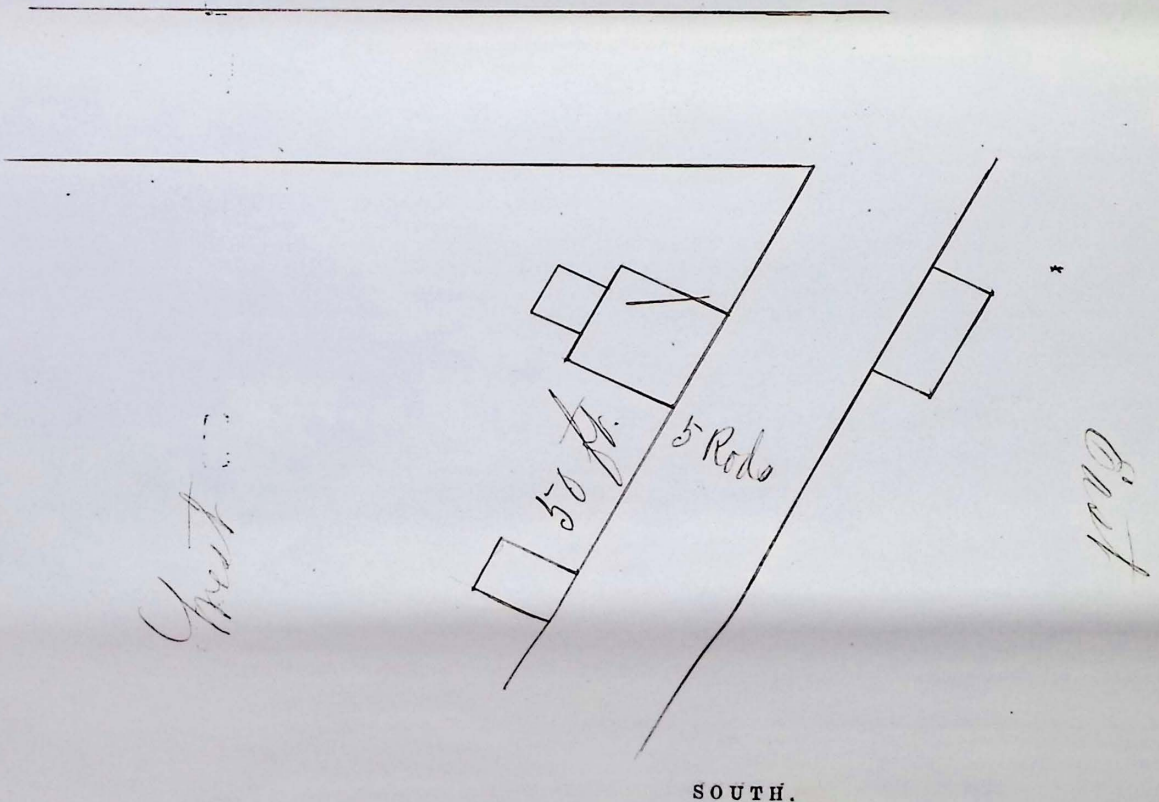
REMARKS OF AGENT.

J. P. DORMAN, *Agent.*

DIAGRAM.

Use *red ink* for brick or stone buildings and *black ink* for frames.

NORTH.



Agents will be particular in noting all buildings within eight rods, of what material constructed; also the distances from each other, and for what purposes occupied.

CONDITIONS OF INSURANCE.

1. APPLICATIONS for insurance on property must be in writing and must specify the construction and materials of the buildings to be insured, or containing the property to be insured; by whom occupied; whether as a private building or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; and whether any manufactory is carried on within or about it, and, in relation to the insurance of goods and merchandise, whether or not they are of the description denominated *hazardous, extra hazardous, or included in the memorandum of special hazards.*

If any person insuring any building, goods or other property in this Office, shall make any misrepresentation or conceal-

ment, or omit to make known any fact or feature in the risk which increases the hazard of the same, or over value the same, or if, after insurance is effected, either by the original policy or by the renewal thereof, such buildings or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, or if the risk be increased by any means whatever, within the control of the assured, such insurance shall be void and of no effect.

120 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 insured, or his representative, of their intention to do so; in which case the Company will refund a ratable proportion of the premium.

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

III. 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.

Goods on storage must be separately and specifically insured.

If the interest in property to be insured be a lease-hold 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.

NOTE.—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.

121 IV. Policies of insurance subscribed by this Company, shall not be assignable without the consent of the Company expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy, or of any interest in it, the liability of the Company, in virtue of such policy, shall thenceforth cease; and the Company reserves to itself the right to elect either to consent to the transfer, or return a ratable proportion of the premium and cancel the Policy.

In case of claim for loss or damages on a Policy assigned, 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 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.

122 V. Notice of all previous insurance upon property insured by this Company, shall be given to them and endorsed on this Policy, or otherwise acknowledged by the Company in writing, at or before the time of their making insurance thereon; otherwise the Policy subscribed by this Company shall be of no effect. And in case of subsequent insurance on property insured by this Company, notice thereof must also, with all reasonable diligence be given to them; to the end that such subsequent insurance may be endorsed on the Policy subscribed by this Company, or otherwise acknowledged in writing; in default whereof such Policy shall thenceforth cease and be of no effect. And in all cases of Insurance, this Company shall be liable only for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.

VI. 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 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 the insurers of the subject insured.

This Company will not be liable for loss or damage caused by lightning, except that which results 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.

123 VII. Books of account, written securities or evidences of debt, title deeds, writings, and money or bullion, are not deemed objects of insurance.

VIII. Jewels, jewelry, precious stones, watches, plate, medals, musical instruments, [piano fortes in dwelling houses excepted,] printed music, scientific instruments, paintings, prints, engravings, statuary, sculptures, curiosities, casts and models, are not included in any insurance, unless particularly specified in the Policy.

124 IX. Persons sustaining loss or damage by fire, are forthwith to give notice thereof in writing to the Company or its Agent; and as soon after as possible they shall deliver as particular an account of their loss and damage, as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath of 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 of each Company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner [as to trade, manufactory, merchandise, or otherwise] the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also produce a certificate under the hand and seal of a Magistrate, Notary Public, or Commissioner of Deeds, (most contiguous 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 acquainted with the character and circumstances of the insured or claimant, and that he verily believes that he, she, or they, have by misfortune, without fraud or evil practice, sustained loss and damage on the subject insured, to the amount therein mentioned, which such magistrate, notary public or commissioner of deeds shall certify.

125 When merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order, as the nature of the case will admit, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods; 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, one-half of the appraisers' fee to be paid by the insurers, and 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, or person claiming, shall produce and exhibit his books of account and other vouchers, to the insurers or their agent, at the office of this Company, in support of his claim, and permit extracts and copies thereof to be made; and shall also exhibit to any persons named by the Company, and shall permit to be examined by them, any property damaged on which any loss is claimed, or any property saved, which was insured by this Policy. And until such declarations, certificates and proofs, full and satisfactory to the Company, are produced, and such appraisals and examination of property and exhibit of books are permitted by the claimant, the loss shall not be payable. Re-insurance for any other Insurance Company, to be on the basis of joint liability with said Company, and in the event of loss, this Company to pay their pro rata proportion of said loss.

126 All frauds or false swearing, shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurers on this Policy.

127 X. 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 quality, and to rebuild, or to repair the building or buildings within a reasonable time, or to take the property at appraised value; giving notice of their intention so to do within sixty days after having received the preliminary proofs of loss required by the ninth article of these conditions. In case differences shall arise concerning the amount of any loss or damage by fire, the matter shall, at the written request of either party, be submitted to the judgement of disinterested arbitrators mutually chosen, whose award in writing, as to the amount of such loss and damage, shall be binding on the parties. Payment of losses shall be made in sixty days after the loss shall have been ascertained, and full and satisfactory proof received by the Company.

XI. Insurance once made, may be continued for such further time as may be agreed on, the premium required therefor being paid, and endorsed on the Policy, or a receipt given for the same; and all insurances, original or renewed, shall be

considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, where the risk has been changed, either within itself, 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 or occupation of the premises insured or of the neighboring premises, the assured shall fail to give information thereof, said Policy and renewal shall be void and of no effect.

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

XIII. 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 the insurers, in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

129 XIV. The Company will not be answerable for any loss arising from the use of open lights in barns, or where shavings are made, or 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. In case of loss, the assured shall assign to this Company all his right to recover satisfaction therefor from any other person or persons, town or other corporation, with a power of attorney to sue for and recover the same at the expense of this Company. And if insured as a mortgagee, he or they shall assign to the Company the mortgage upon the premises insured, together with the debt secured thereby, or so much thereof as will be sufficient to pay said loss. And a refusal to execute such assignment shall operate to discharge this Company from all liability under this contract.

XV. 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 sustainable in any Court of Law or Chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any such suit or action shall be commenced against said Company, after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

CLASSES OF HAZARDS.

NOT HAZARDOUS.

130 Staple Foreign DRY GOODS in packages, and Staple Domestic Dry Goods, in stores where no hazardous merchandize 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 TRADES AND OCCUPATIONS, GOODS, WARES AND MERCHANDIZE are deemed *hazardous*, and subject the building and all its contents to an additional charge of 10 cents per \$100; they are:—China, or earthen or glass ware, or plate glass in boxes, crates or casks; eating houses or refectories, fire-crackers in packages, flax in bales, grocers' stock, gutta percha unmanufactured, hat ironing or trimming or pressing, hay pressed in bundles, hemp in bales, India rubber unmanufactured Manila grass in bales, oil, porter-houses, rags in packages, sail making, segar making, Sisal grass in bales, spirituous liquors, sugars, sulphur, tallow, wine dealers' stock, (not including wine in glass unpacked,) and wool.

131 THE FOLLOWING are considered *hazardous* on account of their liability to damage, and are charged 10 cents per \$100 in addition to, but not increase the rate of the building; they are:—Boots and shoes, brushes, (stocks of,) card printing, coffee, cotton batting and wadding, dry goods, (general stocks of,) flour, furs and peltries in packages, hardware and cutlery, 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, threshed grain, tin or sheet iron or copper ware, wine in casks, wine in glass in packages, window or plate glass in boxes, and generally all other stocks of merchandize, (in buildings where heat is not used for manufacturing,) not elsewhere enumerated.

EXTRA-HAZARDOUS.

132 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 20 cents per \$100; they are:—Alcohol, apothecaries' stock, band-box and paper box making, basket bleaching or making, basket-sellers' stock, blacksmithing, block and pump making, box repairing, brass turning and working, brush makers' stock, cabinet makers' stock, carving, china, earthen or glass-ware or looking-glasses with packing or unpacking, chocolate making, colormen's stock, coopering, copperplate printing, cotton in bales, cotton brokers' samples, daguerreotyping, drugs, (importers' stock, without inflammable acids or phosphorus,) essential oils, gilding, gutta percha goods, gun repairing, hat finishing (with use of fire heat to steam and block the bodies,) India rubber goods, lamp manufacturing, lime unslacked, liquor bottling, lithographing, morocco manufacturing, musical instrument makers' stock, oakum in bales, painters stock, perfumers' stock, pitch, plumbing, and pewtering, pocket-book making, printing of newspapers and engravings, rags and junk shop stock, rosin, ship chandlery, spirits of turpentine, tar, tin or sheet iron or copper working, turning of wood, turpentine, umbrella making, upholstery manufacturing, varnish, and wooden ware sellers' stock.

133 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 building; they are:—Artificial flowers, booksellers' stock, cabinet ware, china earthen or glass ware unpacked, confectioners' stock, daguerreotypists' stock, furs unpacked, jewelers' stock, lamp sellers' stock, liquor in glass unpacked, milliner's stock, musical instruments and printed music, needles, optical and mathematical instrument makers' stock, pictures, and prints, precious stones, pocket-book makers' stock, silversmiths' stock silver and plated ware, straw goods, stationers' stock, toyshop-keepers' stock, watch-makers' stock and tools, window or plate glass unpacked, and wine in glass unpacked.

MEMORANDUM OF SPECIAL HAZARDS.

134 Acids, (nitric, sulphuric, muriatic and other acids causing ignition,) bakeries, bark-mills, bleaching works, blind-makers' shops book-binderies, boat-builders' shops, brass foundries, breweries, brimstone works, brush manufactories, cabinet makers' shops, chair makers' shops, carpenters' shops, candle manufactories, camphine on sale, copper smiths' shops with forges, coffee and spice mills, chemical laboratories, coach makers' shops, comb manufactories, confectionery manufactories, corn kilns, cotton mills, cotton presses, cotton unpacked, distilleries and rectifying establishments, dyeing establishments, druggists' stock, (wholesale,) drug and spice mills, ether, far dressing establishment, fire works fire-work manufactories, flax-mills, floor cloth manufactories, fringe manufactories, fulling-mills, flax unpacked, gas manufactories, grate manufactories, grist or flouring mills, gun manufactories, gun powder, hat manufactories, hay unpacked, houses building or repairing, hemp unpacked, India rubber or gutta-percha manufactories, ink manufactories, iron foundries, ivory-black and lamp black manufactories, lime yards and sheds, livery stables, and lumber-yards, looking-glass and picture frame manufactories, machine shops, mahogany yards, malt houses, matches manufactories metal mills, musical instrument manufactories, oil-boiling houses, oil-cloth manufactories, oiled clothing manufactories, oil mill and manufactories, omnibus stables, plating, plated ware manufactories, packing buildings and yards, paper mills, paper hangings manufactories, percussion cap manufactories, perfumery manufactories, pianing or grooving or moulding mills, powder mills, printing of books and job printing, phosphorus, rope and cordage manufactories, safe (iron) manufactories, stove manufactories, salt petre, sash makers' shops, saw mills, soap manufactories, silversmiths' manufactories, snuff mills, spirit gas manufactories and spirit gas on sale, stables, stove yards, steamboats, steam engines in use, sugar refiners, tobacco manufactories, type and stereotype foundries, tallow melting establishments, tanneries, tar-boiling houses, theatres and other places of public exhibition, timber yards, turpentine distilleries, varnish manufactories, wool mills, wheelwrights' shops, and generally all mills and manufacturing establishments, and all trades and occupations requiring the use of fire heat, not before enumerated.

135 Camphene, Spirit Gas or "BURNING FLUID," when used in stores, warehouses, shops or manufactories, as a light, subjects the goods therein to an additional charge; and permission for such use must be endorsed in writing on the Policy.

Gunpowder, Phosphorus and Saltpetre are expressly prohibited from being deposited, stored or kept in any building insured or containing any goods or merchandise insured by this Policy, unless by special consent in writing on the Policy.

Fences and Privies, also Store Furniture and Fixtures, must be separately and specifically insured.

135 Defendant also gave in evidence sworn statement of Stewart & Scroggs with certificate attached to appraisal-
ment of appraisers, and their assessment, which is as follows:

136 "To the NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

STATE OF ILLINOIS, }
COUNTY OF KNOX, } SS
CITY OF GALESBURG }

"Be it known that on the 29th day of March, A. D. 1861, before me, J. B. Boggs, a Notary Public, legally qualified
"for the city and county aforesaid, personally appeared John C. Stewart and Joseph C. Scroggs, who being duly sworn, de-
"clare under oath, that the *New England Fire and Marine Insurance Company, of Hartford, Connecticut*, through its agency
"at Galesburg, did, on the 17th day of March, 1859, issue to M. A. Wetmore and Charles Long, their policy of Insurance
"No. 2, the written body of which, with its immediate contents and writing endorsements and statements of Renewal of
"said policy are as below specified, said Insurance terminating March 17th, 1861, at noon.

NO. 2. \$900.

"By this policy of insurance the New England Fire and Marine Insurance Company, in consideration \$900 to them
"in hand paid by the assured herein named, the receipt whereof is hereby acknowledged, do insure M. A. Wetmore and
137 "Charles Long, of Galesburg, Knox County, Ill., against loss or damage by fire to the amount of \$300, for one year on
"their mortgage interest on a *boarding house* on the west side of Depot street in said Galesburg, on Lot 3 and Block 52, and the
"said company for the consideration aforesaid, hereby promise and agree to make good to the assured, their executors, admin-
"istrators and assigns, all such loss or damage not exceeding in amount the sum insured as shall happen by fire to the pro-
"perty as above specified from the 17th March 1859 (at 12 o'clock at noon) until 17th March 1860, (at 12 o'clock at noon) &c., &c.
"In witness whereof the New England Fire and Marine Insurance Company have caused these presents to be signed by
"their President and attested by their Secretary in the city of Hartford. N. M. WATERMAN, President.

GEO. D. JEWETT, Secretary.

"Countersigned at Galesburg this 19th day of March 1859.

J. P. DORMAN, Agent.

138 "The New England Fire and Marine Insurance Company hereby consent that the interest of M. A. Wetmore in the
"within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to Charles Long
"Galesburg, March 31, 1859. J. P. DORMAN, Agent."

"For value received I hereby transfer assign and set over unto Charles Long and his assigns all my title and
"interest in this policy, and all advantage to be derived therefrom. Witness my hand and seal this 31st day of March,
"1859. M. A. WETMORE,
G. H. WETMORE."

"January 26th, 1860, the said policy No. 2 was regularly assigned in writing to Stewart & Scroggs by Charles
"Long, which assignment was attached to said policy, which has been lost, which assignment is regularly noted on the
"books of the Galesburg Agency."

139 "New England Fire and Marine Insurance Company, of Hartford, Renewal Receipt No. 5, Galesburg Agency,
"Received of Stewart & Scroggs seven 50-100 dollars, being the premium on six hundred dollars, insured under policy
"No. 2, which is hereby continued in force for one year, to wit: From the 17th day of March 1860, until the 17th day
"of March 1861, at noon. N. M. WATERMAN, President.

"Geo. D. JEWETT, Secretary."

"Countersigned at Galesburg, this 19th day of March, 1860,

J. P. DORMAN, Agent.

140 "And besides that insurance there was no additional insurance made thereon, the whole cash value of the property
"so insured being our mortgage interest, amounted on the 14th day of March 1860 to the sum of \$1422, 53-100 dollars,
"and interest up to this date, and there has been no payment made on said mortgage so insured since the 14th day of
"March 1860. The building prior to our purchasing the mortgage, we do not know by whom, or whether it was occu-
"pied at the date of the assignment of policy to us, and also the renewal on the 17th March 1860, and until the month of
"April the house was vacant. Michael Huestes occupied it for some five months. It was occupied by — Button until
"the month of January, as a *boarding house and saloon*, and by John Dempsey up to the 15th of February for the same
"purpose. From and about the 15th February up to the time of the fire it was vacant and unoccupied, which fire occurred
"on the night of the 9th day of March, near 12 o'clock, as we can learn upon an inquiry; and how it originated is unknown
"to us. The said building was totally destroyed. That the statement of the particulars of the account of loss and facts set
"forth in the above statement are believed to be just and true, and the mortgage specified above belongs to us.

JOHN C. STEWART,
JOSEPH C. SCROGGS."

"John C. Stewart and Joseph C. Scroggs having been duly sworn and subscribed the preceding declaration and
"affidavit, I have in witness thereof set my hand and seal of office in the State, county, city, and date aforesaid.

J. B. BOGGS, Notary Public.

141 (SEAL)
STATE OF ILLINOIS, }
COUNTY OF KNOX, } SS
CITY OF GALESBURG }

"I, J. B. Boggs, a Notary Public in and for said city and county, residing most contiguous to the property of John
"C. Stewart and Joseph C. Scroggs insured as set forth in the preceding affidavit, certify that I am not concerned in that
"loss or have any claim, either as a creditor or otherwise, or related to the insured or sufferers, and that I am acquainted
"with the character and circumstances of Stewart & Scroggs, having made diligent inquiry into the facts set forth in the
"foregoing statement, and believe and know that they really by misfortune, without fraud or evil practice, sustained by
"the described fire, loss and damage to the amount of \$600, the sum stated in the affidavit of 1 ss. In testimony whereof
"I have hereunto set my hand and official seal, this 29th day of March 1861.

J. B. BOGGS,

Notary Public.

[L.S.]

142 "Defendants then swore as a witness *Henry Moore*, who stated he knew the property in controversy; knew what
"the building was used for at the time of the fire—Premises had been used for a *Saloon* from July 1860, to the latter
"part of the winter of 1861. *Beer, candy, and such articles as are usually kept in a Saloon were sold there; they used*
"in the building *glass lamps with fluid*. Houston opened first in part of the building and kept a shoe shop, a *Sweed*
"man kept in the other part of the building a *Saloon*, then. Button occupied it. *I have seen beer there, once found a bottle of*
"Whisky in the saloon; *I have had a Warrant for Button for selling whisky, and a search warrant, and there was a small*
"room in the rear of the building used as a stable, a part of the same building—have seen hay in that small room, a horse
"was kept in it during the winter of 1860 and 1861 about six months; there was hay and grain in the room where the
"horse was kept, for feed, there was a sort of partition or some boards up in the room to keep the horse in. I have seen

143 "strang women there; women of bad character, at different times, have seen them there often. I was marshal of the city; have seen the women there as late as 10 o'clock at night; their character was bad."

Witness cross examined by plaintiffs, and stated Button was there from four to six months, dont know whether the same women remained there all the time, dont think he kept them there; Dempsey was the last occupant. The building had been vacant for three or four months before the fire. Houston kept there for a short time. Button was there six months; I should think he went there in the fall. Stable joined in rear of the building, a few boards were put up in the rear room to keep the horse in; it was a continuation of the same building; was there in 1860 and 1861. *Button acknowledged liquor had been sold there, have seen beer sold there*, know of cigars being sold there. Button called the horse his own. I suppose he was there as a tenant. Women were often there, I considered them such as would take the advantage. Liquors were precluded being sold in the city, beer was sold there. The sign on the house being out as a *boarding house*.

144 Defendants next swore *Jefferson Farmer*, who stated upon his *voir dire*: I have no interest in the result of this suit; am general agent of the company. Have no contingent interest whatever. And then swore in chief without objection, that he received the following letter from Mr. Dorman, purporting to come from Lanphere, one of the Plaintiffs attorneys:

"Jefferson Palmer, Esq., General Agent N. E. Ins. Co.

Galesburg, July 23d, 1860.

"DR. SIR:—Your favor to Mr. Dorman in regard to the claim of Stewart & Scroggs has been considered by them and they have directed me to answer it, and accept of your proposition, *on condition that they are not to be called on to pay any of the Court costs in obtaining the decree*. They have already commenced suit against your company, which will be withdrawn if this arrangement is completed. Respectfully Yours, G. C. LANPHERE."

145 I saw Stewart in July 1861, told him it was necessary for them to assign his mortgage interest to the company, and I received the letter from Mr. Lanphere in reply, and received the assignment in Nov., 1861, dated Nov. 25th, 1861. Which is as follows: "In the Knox County, Illinois, Circuit Court, Bill in Chancery to foreclose Mortgage, Decree of Foreclosure, June 6th 1860, for \$1422.53 and cost of suit. Charles L. Long, Complainant vs., William H. Marvel et al., Defendant.

"In consideration of the sum of six hundred dollars, to us in hand paid by the *New England Insurance Company*. We John C. Stewart and Joseph C. Scroggs, assigns of the above mentioned mortgage and notes and of the said decree obtained in the said court, do hereby assign, transfer and set over unto the said Insurance Company *without recourse to us*, the above mentioned decree, notes and mortgage, and do hereby fully authorize and empower the said Company to collect and receipt for the same.

146 "Witness our hands and seals this 25th day of Nov., A. D., 1861.

JNO. C. STEWART, [Seal.]

JOSEPH C. SCROGGS, [Seal.]

I never saw the other assignments of the mortgage interest or decree, nor one of July 15th, 1861. I had a conversation with Stewart and he procured an abstract of title and said he could not assign the mortgage, that he had no interest in it, and that I had no right to demand it. I should have known if one had been tendered the Company in July 1861, for I was at Galesburg, and saw Mr. Stewart there after the 15th of July, 1861, I think towards the last of the month; Stewart refused to assign mortgage interest in March, 1861, also in July, 1861.

Cross examined by Plaintiffs. Stated Stewart denied the right of the Company to demand the assignment. He said we had no right to claim it. I never submitted or showed the assignment sent me to the Company. He did not have an absolute title. I received the assignment the latter part of the month by mail. Am not certain whether it was from Lanphere, Stewart & Scroggs or Dorman. I have seen Mr. Waterman's letters for four years, have never seen him write.

147 Defendant next swore *Mervin Ransom*, who stated that his recollection corroborated Mr. Farmer so far as Stewart's denying the right of the company to demand an assignment of the notes and mortgage. Also that Stewart said he could not assign the mortgage—not having any absolute title. Farmer, Dorman, Stewart, Ford and myself were present at that conversation which I think was in March, 1861.

Defendant next gave in evidence assignment set out heretofore and testified about by Farmer, Signature being admitted, also letter of G. C. Lanphere referred to and set out in Farmer's evidence, signature being admitted.

Defendant here rested.

148 The plaintiff next offered in evidence without objection the following letter:

"GEO. C. LANPHERE, Esq. Galesburg, Ill., DEAR SIR:

"HARTFORD, CONN., June 19th, 1861.

"Your favor of 14th inst., is at hand, have directed a Mr. Farmer to look over the S. and S. matter again and report. Having insured S. and S. as mortgagees, we expect when they are paid, they can so manage the title as to place this company (to the extent of its payment) on the same footing as themselves. If Mr. Long has become possessed of a judgment which stands in their way, it is for them to remove such disabilities as they have been requested to do. When they have so done, they will have no cause to complain. But until they show that they can give us a good title we want no investment in their mortgage. Truly Yours, N. M. WATERMAN, President.

149 The defendant then offered in evidence without objection the following letter of J. Farmer:

J. P. DORMAN Esq. Galesburg, Ill. DEAR, SIR:

"CHICAGO, GEN. AGENCY, July 17, 1861.

"We find it best to avoid litigation if possible and therefore wish you to inquire of Messrs Stewart & Scroggs, whether they will assign and transfer to the *New England Fire and Marine Insurance Company of Hartford, Conn.*, the notes and mortgage and also the decree of sale in Chancery pertaining to the property on which they hold Policy No. 3 in said Insurance Company, on condition of said Insurance Company paying them the sum of \$600, their claim thereby, and of giving them a bond to refund to them all over the sum of \$600, that may be realized from said notes, mortgage and decree of sale. Very Truly yours, JEFFERSON FARMER, Gen. Agent."

This was all the evidence in in the case.

The Plaintiff asked the following instruction:

150 *Given.* The Jury is instructed that the hitching of a horse in the building would not make the building more hazardous, under the conditions of insurance, *unless in addition it was used as a common stable*, and thereby brought within the condition of the policy.

Defendant objected and excepted to the giving of said Instruction.

Defendant asked the following Instructions:

Re 5th. If the Jury believe from the evidence that the mortgage interest in said premises and policy at the time of the fire had been assigned to Stewart & Scroggs, and the assignment of the policy consented to by the Insurance Co.,

and that the Plaintiffs, Whetmore and Long, had no interest in said mortgage or decree at the time of the fire the Jury will find for Defendant.

6th. If the Jury believe from the evidence that the Plaintiff, Long and Whetmore were the owners of said mortgage interest insured in said premises, at the time of the fire, and that upon this trial they have not proven that they made the proofs to the defendant, as stated in Instruction No. 4, the Jury will find for the Defendant.

8th. If the Jury believe from the evidence that the said Stewart & Scroggs refused to make an unconditional assignment of said mortgage interest insured to Defendant at any time after the fire, the Jury will find for Defendant.

The Court refused to give Instructions No. 5, 6 and 8, and Defendant excepted.

Defendant also asked the following Instructions.

3d. If the Jury believe from the evidence, that on the 23d day of July, 1861, the said Stewart & Scroggs, through their attorney, G. C. Lanphere, refused to assign to Defendant all their interest, without imposing conditions upon said Defendant, in said assignment, then the Jury will find for the Defendant, unless they believe from the evidence that the Defendant afterwards and before the commencement of this suit, accepted an assignment of the mortgage interest in said property.

The Court refused to give said Instruction No. 3 and Defendant excepted. But the Court gave said Instruction No. 3 as modified by the Court, which is as follows:

3d. If the Jury believe from the evidence that on the 23d day of July, 1861, or at any other time after the fire said Stewart & Scroggs, by themselves, or through their attorney, G. C. Lanphere, refused to assign to Defendant, all their interest, without imposing unreasonable conditions upon said Defendant, in said assignment to said defendant, then the Jury will find for Defendant, unless they believe from the evidence that the Defendant afterwards, and before the commencement of this suit, accepted an assignment of the mortgage interest in said property. But the fact that Stewart & Scroggs insisted that they were not to be called on to pay any of the Court costs in obtaining a decree on the mortgage was not an unreasonable condition within the meaning of the first part of this Instruction.

To the giving of said instruction as modified the Defendant objected and excepted.

The Court, on motion of Defendant, gave the following instructions Nos. 1, 2 and 4.

1st. If the Jury believe, from the evidence, that a part of the building insured as a boarding house, was used and occupied as a stable since the execution of said Policy, and before the fire, without the written consent of said defendant, the Jury will find for the Defendant.

2d. If the Jury believe, from the evidence, that spirituous liquors were kept in a shop for sale in said insured building, without the consent of the Company in writing, after the execution of said Policy, and before the fire occurred, they will find for Defendant.

4th. Unless the Jury believe, from the evidence or from the admissions made by Defendant and read to the Jury, that the persons sustaining loss in the said building on said premises insured, gave notice in writing to said Company, or their agent, as soon after as possible, and delivered as particular an account of their loss or damage, as the nature of the case would admit, signed with their own hands, and accompanying the same with their oath or affirmation, declaring the said account to be just and true, and showing what other, if any insurance had been made on said property, and what was the whole cash value of the subject insured, and what was their interest therein, and in what general manner as to trade, merchandize, or otherwise, the building insured, and the several parts thereof were occupied, if occupied at the time of the loss, and who were the occupants of such building if occupied, and where and how the fire originated, so far as they know or believed, and also, produce a certificate, under the hand and seal of a Magistrate, Notary Public, or Commissioner of Deeds, most contiguous 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 had examined the circumstances attending the fire, loss or damage alleged, and that he was acquainted with the character and circumstances of the insured, or claimants, and that he verily believed that they had by misfortune and without fraud or evil practice, sustained loss or damage on the interest insured in said property to the amount in such certificate stated, which shall have been certified to by the said officer, the Jury will find for the Defendant.

The cause was then submitted to the Jury who returned the following verdict: "We the Jury find the issues for the Plaintiffs and assess their damages at the sum of six hundred and thirty-three dollars.

L. H. RITCHEY, Foreman."

Defendant excepted to the verdict and filed the following motion for a new trial and in arrest of judgment.

STATE OF ILLINOIS, } SS Knox Circuit Court.
KNOX COUNTY. } June Term, A. D. 1862.
George H. Wetmore, et al. }
vs } Assumpset.
New England Fire and Marine Insurance Co. }

The Defendant comes and moves the court for a new trial, and in arrest of judgment, for the following reasons, to wit:

1st. Because the declaration shows upon its face that the Plaintiffs had no interest in the property insured at the time of the fire.

2d. Because George H. and Mary A. Wetmore had assigned their interest in the Policy and Mortgage interest in said premises to said Long before the fire and before the commencement of this suit, which appears in the declaration and evidence.

3d. Because Stewart & Scroggs had the whole interest in said premises and Policy at the time of the fire as is averred in the Declaration and proven upon trial.

3d. Because Stewart & Scroggs had no interest in said premises at the time of the obtaining a Renewal Receipt of said policy.

4th. Because the Court permitted Joseph C. Scroggs to testify as a witness in said cause upon the trial.

5th. Because the Court permitted the Plaintiffs to give in evidence the Policy without the application.

6th. Because the Court permitted the Plaintiffs to give in evidence an assignment to the New England Marine and Fire Insurance Company tendered to Defendants and refused by them.

7th. Because Court permitted Plaintiffs to give in evidence an assignment to said Stewart & Scroggs dated July 7th 1860, executed by Charles Long.

8th. Because the Court admitted in evidence a Renewal Receipt to Stewart & Scroggs, when they had no interest in the premises at the time of its date.

9th. Because the Court admitted in evidence an agreement between the Defendant and Stewart & Scroggs, and declaration of appraisal without the attached proof of loss.

10th. Because the evidence did not show any proof of loss made by Plaintiffs to Defendant before the commencement of this suit, or at any other time.

11th. Because the Court refused proper instructions asked by defendant.

12th. Because the Court gave improper instructions for the plaintiffs.

13th. Because the Court refused instructions as asked by defendant, and gave them as modified by the Court.

14th. Because the Court permitted improper evidence to go to the jury.

159 15th. Because the Court overruled the defendant's motion for a non suit.

16th. Because the verdict of the jury was against the evidence.

17th. Because the verdict was against the law.

18th. Because the verdict was against the instructions given by the Court.

19th. Because the evidence proved conclusively that the building insured as a boarding house was changed and a part of it occupied as a *stable* and a horse kept in it for six months with hay and food for the horse during the winter of 1860 and 1861.

TYLER & RANSOM, Attorneys for Defendant.

160 The Court overruled the motion for new trial and in arrest of judgment, and rendered judgment on the verdict. The defendant then and there objected and excepted.

A. TYLER, Attorney for Appellant.

190
New England Fire &
Marine Ins. Co.
NS

Geo. H. Wetmore et al.

Abstract

June April 22, 1863
L. Selander
M.E.

NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY,
vs.
GEORGE H. WETMORE, et. al.

STATE OF ILLINOIS,
In the Supreme Court,
April Term, A D., 1863.

A P P E A L F R O M K N O X .

ABSTRACT.

2 This was an action of assumpsit commenced in the Knox Circuit Court at February Term, A. D., 1862, for \$1000
damages for loss by fire, of property insured, was tried before a Jury at the June Term, 1862. Motion for new trial and
76 in arrest of Judgment overruled, and Judgment rendered for Plaintiffs for \$623, after deducting the sum of \$10 remitted
by Plaintiffs, and for costs at the September Term, A. D., 1862.

DECLARATION IS AS FOLLOWS :

1st Count charges, that on March 17th, 1859, M. A. Wetmore and Charles Long, were owners of two notes executed
8 by Wm. H. Marvel to John Riggan, one for \$1000, one for \$375, both with interest, and dated November 6th, 1856, and
that Marvel mortgaged Lot 3 in Block 52 on West side of Depot street, in Galesburg, Ill., to secure the payment of said
notes, with others, that the mortgage also belonged to M. A. Wetmore and Long, and that Geo. H. Wetmore then and
ever since was the husband of M. A. Wetmore, and that March 19th, 1859, Defendant insured said Lot by Policy No. 2,
4 in consideration of \$9, paid by M. A. Wetmore and Long against loss by fire to amount of \$900, mortgage interest, as a
"boarding house," and Defendant agreed to make good to the insured, their executors, administrators, or "assigns" all loss
or damage, not exceeding amount insured, from 17th March, 1859, at 12 o'clock, noon, until 17th March, 1860, at 12 o'clock,
noon. Estimate of loss to be cash value of property at the time of happening, and to be paid 60 days after due notice and
proof made by insured, and received at office of Defendant, in conformity to annexed conditions to policy : Provided
5 Defendant not liable for loss or damage by fire by means of invasion, insurrection, riot, civil commotion, any military or
usurped power, or loss by theft after fire ; and that, if the insured, or any person, with knowledge of insured, have exist-
ing during continuance of Policy, other insurance against loss by fire on property insured, and not consented to by De-
fendant in writing, and mentioned and endorsed on policy, or assured should make any attempt to defraud Defendant ;
policy to be void, and in case of other insurance prior or after date of policy, insured should not, if loss or damage, be en-
titled to any greater proportion of loss or damage than amount insured should bear to whole amount insured, and if
6 premises should at any time after the making of Policy, during its continuance be used for purpose of carrying on any
trade, business, or vocation therein denominated hazardous or extra hazardous, or specified in memorandum of special haz-
ards, in conditions annexed to policy, or storing therein articles, goods or merchandize in said terms or conditions denomi-
nated hazardous, extra hazardous, or included in memorandum of special hazards, excepting therein provided for specially
or agreed to by Defendant in writing, added to or endorsed on policy, then and from thenceforward, so long as the same should
be appropriated applied or used for that purpose, these presents therein should cease, and be of no force or effect. Insu-
rance not to cover Books of accounts, written securities, deeds, or other evidence of title to land, bonds, bills, notes or other
evidence of debt, money or bullion. Policy made and accepted in reference to the terms and conditions annexed. Policy
7 if not changed might be continued for further time as agreed upon, if the premium was paid and endorsed on policy, or
Receipt given for same ; and Policy not assignable without consent of Defendant in writing ; and if assigned or transferred
interest in premises without such consent, Policy void. Policy not valid unless countersigned by authorized
agent at Galesburg, Ill. After the agency of J. P. Dorman, Galesburg, and countersigning of Policy, declaration then sets
8 out conditions annexed to the policy. Plaintiffs aver that on the 31st March, 1859, M. A. Wetmore and G. W. Wetmore,
9 her husband, assigned all interest in policy to Charles Long, and consent of agent ; and that Long assigned to John C. Stew-
10 art and Joseph C. Scroggs, Policy January 26th, 1860, and consent of Company by agent to assignment, and delivery of
20 Policy to Parties to whom assigned ; and that March 25th, 1859, M. A. Wetmore and G. W. Wetmore, her husband, sold
21 assigned and delivered to Long interest in notes and mortgage, and Long, January 26th, 1860, sold, assigned and deliver-
22 ed notes and mortgage to John C. Stewart and Joseph C. Scroggs, and on 19th March, 1860, said Stewart & Scroggs paid
J. P. Dorman, agent of Defendant, \$7.50, Premium on Six Hundred Dollars, for one year, and Dorman, agent, delivered to
Plaintiffs Receipt No. 5, called "renewal receipt," signed by President and Secretary and countersigned by agent, and being
premium on \$600, insured under Policy No. 2, and that Policy was continued in force for one year for benefit of Stewart
& Scroggs, from 17th March, 1860, to 17th March, 1861, at noon, on boarding house and saloon on said mortgage premises, and
23 that in the night between the 9th and 10th of March, about midnight, building without any fault of Plaintiff's, or Stewart &
Scroggs, was burnt, accidentally ; and that it was worth \$1422, and due on notes and mortgage \$1450 to Stewart & Scroggs
at time of Fire, and that they were the entire owners of said notes and mortgage and interest insured ; that Dorman, agent
of Defendant, was at fire of said " Boarding House ;" that March 18th, 1861, Stewart & Scroggs gave Dorman, an agent,
24 notice in writing of loss ; 29th March, 1861, delivered to Dorman particular account of loss, value of property insured,
by whom owned, duly signed and sworn to, and a certificate of Notary Public under the conditions, that notice, state-
ment, declaration, certificate and proof were satisfactory to Defendant ; that Defendants waived any and
25 all objections to imperfections, deficiencies in notice of loss. Account filed with them by Stewart &
Scroggs, and certificate of said notary. Fire not caused by explosion of any steam boiler, nor caused by
Camphine, Gunpowder, or any other explosive substance, nor by use of open lights in barns, or where shavings were made,
nor from having unsubstantial stone or brick chimneys, nor from a neglect or deviation from the laws or regulations of
policy, nor by invasions, insurrections, riot, or civil commotion, or of military or usurped power. That at the time said
26 boarding house was burned, it was vacant, that there was no other insurance on property ; that at the time of the fire the
building was not appropriated or used for any business denominated hazardous, extra hazardous, or specified in memoran-
dum of special hazards, in the terms and conditions annexed to said policy, nor for storing goods or articles denominated
hazardous, extra hazardous, or in memorandum of special hazards named ; not caused by lightning. That at request of
27 Defendant, with assent and concurrence of said Stewart & Scroggs, M. D. Billings and A. N. Carpenter, were chosen as
arbitrators to determine loss, and before commencement of suit did award and determine amount of loss at \$1000. That
amount of said insurance not paid although 60 days elapsed after making said award before suit commenced, nor have Defen-
dant rebuilt nor given notice to, although 60 days have elapsed since proof made and furnished Defendant. That on 15th
28 July 1861, Stewart and Scroggs executed and offered to deliver to said Dorman as agent of Defendant, an assignment of
\$600 of note and mortgage and decree with power to collect, and refused by said agent ; on 16th January, 1862, Stewart &
Scroggs executed and delivered to said Dorman full and absolute assignment, note mortgage and decree, with all right ;
that Defendant had notice of all and was requested to pay said sum of \$600.

2
29 2d Count, Common Count for money received for use of Plaintiffs, and account started, and promise to pay, and
30 failure to pay.

to Copy of Instrument sued on. Copy of Policy, conditions annexed and assignments, renewal Receipt, set out herea-
46 ter in Bill of exception.

The pleas were as follows :-

51 1st. General issue.

52 2d Plea to 1st count, that building insured was described and insured as a dwelling in which boarders were kept and
that it was occupied as a Saloon and disorderly house and part as stable.

53 3d Plea to 1st count, that Defendant requested and Plaintiff refused to assign interest insured after fire or so
much as would pay loss, except upon condition that Plaintiffs should not be called upon to pay any Court costs in ob-
54 taining decree.

4th Plea to 1st count, that Stewart & Scroggs at the time of giving the Renewed Receipt represented that they
were mortgagees, and that they were not.

55 5th Plea to 1st Count, at date of Policy and Renewed Receipt, it was Represented to Defendant that building in-
sured was dwelling house but that it was used as a Restaurant and eating house during the time and after the Renewed Re-
ceipt was issued.

56 6th Plea to 1st count, that the building after the issuing of the renewal receipt under control of Stewart & Scroggs
for one month, was used to store Gunpowder, Camphine, burning Fluid and Saltpeter, and burning fluid and camphine
was used for lights in building.

57 Plaintiffs took issue upon 1st Plea, Demurred to 2d, 3d, 4th, 5th, and 6th, Demurrer sustained.

65 Amended Pleas 1 and 2 filed and issue joined upon them.

1st Amended Plea, that Stewart & Scroggs were not the assignees of the mortgage interest at the time of the
issuing of the Renewed Receipt.

2d Amended Plea, avers that Stewart & Scroggs did not assign the mortgage interest in premises as averred in
Declaration.

65 Defendant moved the Court for leave to withdraw his pleas, motion refused.

80 Issue was joined on 1st plea, and 1st and 2d amended pleas, to the country, jury sworn.

81 The Plaintiffs, to maintain the issue on their part, offered in evidence two notes, mortgage from Wm. H. Marvel to
John Rigger. The 1st note dated November 6th, 1856, payable six months from date for \$375, six per cent interest from
date, with credit of \$165 November 15 1856, and endorsed on the back of said note is the following: "I hereby agree
"to guarantee the payment of the within note, Feb. 21, 1857. JOHN RIGGEN."

"Received on the within notes all of the face and interest of the same up to the present date, save and except the
"sum of one one hundred and twenty-nine dollars and seventy-three cents, which is now due and remaining unpaid, Janu-
"ary 20, 1858, by the understanding of all parties. W. O. WATTS.

"Mary A. Wetmore, G. H. Wetmore.

82 2d Note is for \$1000, dated November 6th, 1856, payable 24 months after date, 6 per cent interest from date, 10 per
cent after due. On the back of said note is the following:

"Mar 10 '59. For value received I assign the within to M. A. Wetmore and Charles Long, with recourse on me,
JOHN RIGGEN.

"Mary A. Wetmore, G. H. Wetmore.

The mortgage is dated November 6th, 1856, executed by Wm. H. Marvel to John Rigger, on lot No. 3 in block No.
88 52 in Galesburg, Ill. in usual form of warrantee mortgage, for the payment of \$2000, with interest as follows: \$250 with
84 use January 1st 1857; \$370 with use May, 6th, 1857, \$375 with use November 6th, 1857, \$1000 with use 6th day of
85 November 1858, according to 4 certain notes, dated November 6th, 1856. Properly acknowledged.

The following assignments on the back of said mortgage :-

86 STATE OF ILLINOIS, } GALESBURG, MARCH
KNOX COUNTY } 10TH 1859.

"For value received I hereby assign and set over to M. A. Wetmore and Charles Long all my right title and interest
"I have and hold to the within mortgage, but in foreclosing the with mortgage the assignor is to be from costs.

JOHN RIGGEN,

her
ANNA X RIGGEN.
mark

STATE OF ILLINOIS, } SS
KNOX COUNTY. }

"For value received, we hereby sell and assign the within mortgage and premises therein described, and all our
"right and title thereto to Charles L. Long, who is the assignee intended in the above assignment of John Rigger.
Galesburg, March 25, 1859.

G. H. WETMORE,
MARY A. WETMORE."

The last assignment was properly acknowledged.

87 Defendants objected to all the above evidence and excepted.

88 The Plaintiffs next offered in evidence the policy of insurance, without the application, Defendants objected, Court
allowed it to go in evidence. Policy as follows :-

"New England Fire and Marine Insurance Company, of Hartford Conn., No. 2. \$9.00. By this policy of Insurance,
"the New England Fire and Marine Insurance Company in consideration of nine dollars to them in hand paid by the
89 "assured hereafter named, the receipt whereof is hereby acknowledged, Do Insure M. A. Wetmore, and Charles Long of
"Galesburg, Knox county Illinois, against loss or damage by fire to the amount of \$9.00 for the period of one year, their
"mortgage interest on a boarding house on the west side of Depot street, in said Galesburg on lot 3 and block 52, and
"the said company for the consideration aforesaid do hereby promise and agree to make good unto the said assured, their
"executors administrators and assigns, all such loss or damage not exceeding in amount the sum insured, as shall happen
"by fire to the property as above specified, from the seventeenth day of March, one thousand eight hundred and fifty-nine
"(at 12 o'clock noon,) until the seventeenth day of March one thousand eight hundred and sixty (at 12 o'clock at noon),
"the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the
"same shall happen, and to be paid within sixty days after due notice and proof thereof, made by the insured and received
"at this office in conformity to the conditions annexed to this policy, provided always, and it is hereby declared, that this
"Company shall not be liable to make good any loss or damage by fire which may happen or take place by
"means of invasion, insurrection, riot, civil commotion, any military or usurped power, or any loss

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"by theft, at or after a fire, and provided further, that in case the assured or any other persons or parties, with the knowledge of the assured, shall have existing, during the continuance of this Policy, any other insurance against loss by fire on the property hereby insured, and not consented to by this company in writing, and mentioned in or endorsed upon this policy, or if the assured shall make any attempt to defraud the company, then this insurance shall be void, and of no effect, and in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises, shall at any time after the making of, and during the time this Policy would otherwise continue in force, 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 this policy, or for the purpose of storing therein any of the articles, goods, or merchandise in the same terms and conditions denominated hazardous, extra hazardous, or included in the memorandum of special hazards, except herein specially provided for or hereafter agreed to by this Company in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease, and be of no force or effect. And it is moreover agreed and declared that this insurance is not intended to apply to or cover any Books of account, written securities, deeds, or other evidence of title to land, nor to mortgages, bonds, bill, notes or other evidence of debt, nor to money or bullion. And that this Policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise especially provided for. This Insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefor is paid and endorsed on the policy, or Receipt given for same. The interest of the insured in this Policy is not assignable unless by consent of this company, manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this Policy shall from thenceforth be void and of no effect. This policy shall not be valid until countersigned by the authorized agent of said New England Fire and Marine Insurance Company, at Galesburg, Ill. In Witness Whereof, The New England Fire and Marine Insurance Company have caused these presents to be signed by their President and attested by their Secretary, in the City of Hartford,

GEO. D. JEWETT, Secretary.

Countersigned at Galesburg, this 19th day of March, 1859.

J. P. DORMAN, Agent.

Defendant objected to the giving in evidence the said Policy, without the application. Court overruled objection and permitted the same to go in Evidence. Defendant excepted.

Plaintiffs next offered in Evidence the assignment of Wetmore of Policy and consent of agent Dorman. Defendants

objected. Court overruled objection, let the same in evidence. Defendant excepted. The assignment and consent of agent is as follows:

"For value received, I hereby transfer, assign and set over unto Charles Long and his assigns, all my title and interest in this Policy, and all advantage to be derived therefrom. Witness my hand and seal this 31st day of March, A. D., 1859.

M. A. WETMORE,
G. H. WETMORE."

"The New England Fire and Marine Insurance Company hereby consent that the interest of M. A. Wetmore in the within Policy subject to all the conditions and terms therein mentioned and referred to, be assigned to Charles Long, Galesburg, March 31st, 1859.

J. P. DORMAN, Agent."

Plaintiffs next offered and gave in evidence an agreement which admits J. P. Dorman agent at Galesburg, from time of issuing Policy to trial.

That Stewart & Scroggs 29th March, 1861, delivered a notice and proof of loss by fire of the building insured by Defendants. That Dorman, by rules of Company, consented to assignment of Policy by Long to Stewart & Scroggs.

That Books of Defendant in control of Dorman show date of assignment and consent of Defendant to it.

Plaintiffs next offered in evidence, Defendant objected, Court overruled objection and Plaintiffs read in evidence, Defendant excepted, a Renewal Receipt, as follows:

"NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY, OF HARTFORD, Renewal Receipt No. 5, Galesburg Agency.

"Received of Stewart & Scroggs seven 50-100 dollars, being the premium on Six hundred dollars insured on Policy No. 2, which is hereby continued in force for one year, to-wit: from the 17th day of March, 1860, until the 17th day of March, 1861, at noon.

N. M. WATERMAN, President."

GEO. D. JEWETT, Secretary.

Countersigned at Galesburg, this 19th day of March, 1860.

J. P. DORMAN, Agent."

The Plaintiffs next offered in evidence as a witness, J. B. Boggs, who was sworn and testified that he knew the Marvell property on Lot 3 in Block 52, original town of Galesburg, situated on Depot street, I think South West continuation of Kellogg street, little North of East of the Bancroft House. I was at the fire a little after midnight between 9th and 10th of March, 1861; don't think the building was occupied; saw Dorman at the fire; building was wholly destroyed. I have passed building frequently. I recollect the proof of loss (the paper with proof of loss handed to witness) the signature and seal are mine.

Cross-examined. I think the building was on Depot street, would not swear positively to it; know the description of the property.

Plaintiffs next called A. N. Carpenter, who swore he knew the building; think it was on Depot street; know of the loss by fire. Building was North East of Bancroft House. I was called on to appraise property. I am a carpenter. Swore to appraisement. Billings and myself signed the award. I was requested to act by Dorman. Have not examined the property since. The Estimate in our award or estimate signed by us, is the amount we estimated it at.

Plaintiff then offered in evidence the agreement to appoint appraisers, the oath of appraisers and their assessment of damages, without the statement of loss and application for such appointment. Defendant objected to the evidence. Court overruled the objection, and let in the evidence. Defendant excepted. The agreement to appoint, oath of appraisers and their assessment of damages, is as follows:

"NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY OF HARTFORD, CONN. AGREEMENT 18.—It is hereby agreed by J. O. Stewart and J. O. Scroggs, of Galesburg, Illinois, of the one part, and the New England Fire and Marine Insurance Company, of Hartford, Conn., on the other part, that A. N. Carpenter and M. D. Billings, (together with a third person to be appointed by them, if necessary) shall appraise and estimate at the true cash value the damage by fire to the property belonging to Stewart & Scroggs as specified in the accompanying schedule, which appraisement and esti-

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100 "mate by them, or any two of the n, shall be binding upon both parties, so far as regards such appraisalment, it being
"understood that this appraisalment is without reference to any other questions within the terms and conditions of the
"insurance, being so far only as regards the value of or damages to such property as may be found to have been saved in
"a damaged condition, which was insured by policy No. 2, with the said New England Fire and Marine Insurance Co.,
"of Hartford, Conn. Witness:

"STEWART & SCROGGS,
"J. FARMER, Gen'l. Agent."

STATE OF ILLINOIS, }
COUNTY OF KNOX, }

DECLARATION OF APPRAISERS.

"We, the undersigned, do solemnly swear that we will act with impartiality and fidelity in making an appraisalment
101 "and estimate of the damages to the property of Messrs. Stewart & Scroggs, insured by policy No. 2, in the New England
"Fire and Marine Insurance Company, of Hartford, and saved in a damaged condition, agreeable to the foregoing ap-
"pointment, and that we will return to the said New England Fire and Marine Insurance Company a true and perfect,
"and a just and conscientious appraisalment and estimate of damage on the same, according to the best of our knowledge
"skill and judgment.

"M. D. BILLINGS,"
"A. N. CARPENMER."

"Sworn and subscribed to before me this 29th day of March, A. D., 1861.

JOSIAS GRANT,
Notary Public."

"We, the undersigned, after a careful estimate of the value of the building owned by Stewart & Scroggs and burned
on the 9th inst., do make the costs of replacing the same to be, . . . \$1000 00
And would deduct new for old, . . . 333 33

\$666 67

"Making the actual loss by said burning to be six hundred and sixty-six and 67-100 dollars.

"M. D. BILLINGS,"
"A. N. CARPENTER."

102 Plaintiffs next swore L. Douglass. States that he, on the 16th January, 1862, in Galesburg, near McCoy's Bank,
made a tender of assignment of notes and mortgage by Stewart & Scroggs to Defendant, to Dorman agent of Defendant,
and on cross examination states that he did not know that he, Dorman, was authorized by Defendant to receive it for
Defendant.

Plaintiffs next offered in Evidence following assignment of Stewart & Scroggs to Defendant :

"In the Knox County Illinois Circuit, Bill in Chancery to foreclose Mortgage, Decree of Foreclosure, June 6th, 1860.

"Charles L. Long, Complainant,

vs.
"William H. Marvel, et. al., Defendants."

"In consideration of the sum of Six hundred dollars to us in hand paid, We, John C. Stewart and Joseph
103 "C. Scroggs, assignees of said Long of the above mentioned mortgage, and the notes it was given to secure, and of the
"decree made in said suit by said court at said term, do hereby assign, set over and transfer unto the New England Fire
"Marine Insurance Company, without recourse to us, the above named decree, mortgage and notes, and do hereby fully
"authorize and empower them to collect and receipt for the same, and to take such legal steps at their costs as may be neces-
"sary to collect the same, and we do also hereby assign to said Company all right which we may have to collect from any
"incorporation or individual any sum of money for or on account of the burning the boarding house and saloon, insured by
"said Company by policy No. 2, dated march 19th, 1859, and do authorize them to take such legal steps as may be neces-
"sary without expense to us to collect said last mentioned sums of money and to receipt for same. Witness our hands and
"seals this 10th day of January, 1862.

JOHN C. STEWART, [SEAL]

JOSEPH C. SCROGGS, [SEAL]

To the giving in evidence said assignment the Defendants objected, Court overuled objection and Defendants excepted.
104 Plaintiffs next offered in evidence an assignment from Stewart and Scroggs of the interest in notes and mortgage and
decree, same as above substantially, except date and party to whom made, it was dated 15th July 1861, and made to the
105 "New England fire and Marine Insurance Company". Defendants objected to the giving of said last assignment in evi-
dence. Court overuled objection and let in the assignment, in connection with J. Gales evidence, herein after set out, De-
fendants excepted. Signature was not denied to either of said assignments.

106 Plaintiffs next swore Josiah Gale, who stated: I have just read the assignment, a similar one was tendered to
Dorman about a year ago, Scroggs read it to him in my presence, my impression is it is a duplicate, cant say whether
Scroggs retained it or not. Cross examined, could not say possitively whether it was the same paper or not, thought it
was.

Plaintiffs next swore Zimri Pond, who stated he knew George and Mary Wetmore, known them for five years, pass
and live together as husband and wife, have examined signatures on notes, mortgages and policy, and they are their
signatures.

107 Plaintiffs next called J. C. Scroggs, who was sworn on his voir dire, stated he had no interest at present in the result
of this suit, cant say when I parted with my interest, I did once have an interest in this insurance and property insured,
assigned my interest to the insurance company, think I assigned my interest to McFarland, cant say when I assigned my
interest to him, was equally interested with Stewart, assigned by writing, I think the first suit had then been commenced,
I had an interest in the property at the time of the fire, also in notes and mortgage, think I assigned notes and mortgage
to McFarland, I had an interest at the time of the fire, and when proof of loss was made. I never assigned my interest
in the policy to any one, never assigned my interest to any one else except the Insurance Company. We made the proof
of loss. Dont remember I ever told Farmer I was interested. Defendants objected to witness being sworn in chief and
testifying on account of interest in the result of the suit. Court overruled objection and let witness testify, Defendants
excepted, and J. C. Scroggs swore as follows: This was the policy assigned originally to us by Whetmore, I do not re-
108 member the exact date, assignment was in writing, dont know where it is, never made any search for it, know it was
in writing and attached to the policy, is torn off, assignment was made to Stewart and myself, I know that the notes
and mortgage were assigned to us by Long, I dont know whether any assignment was made in writing, dont remember
whether it was written, It was before the issuing of the "Renewal Receipt," I cannot state whether it was in writing or
not, I never had any conversation with Dorman about it. Before the assignment to us, Long had filed a Bill to foreclose,
and the suit went in his name to a decree, I served an assignment of our interest in said notes, mortgage and decree on

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108 Dorman, I remember the erasure and date, Mr. Gale was with me, the erasure in assignment was made while Gale was with me, it was served 15th July 1861, copy produced is the one served on Dorman.

109 Plaintiffs next swore Z. Cooley for the purpose of showing an alteration of an endorsement of credit on said notes since the computation by master in the Foreclosure of said mortgage by the *addition of the letter "s"* to the word "*note*," he stated he was special master in said case, cannot say positively whether said "*s*" has been added since computation I made; did not notice it then; dont think it was there.

111 Plaintiffs then recalled J. C. Scroggs, and showed him an assignment from Long to Stewart & Scroggs, dated July 7th, 1860, he stated: I do not remember of seeing this assignment before, I recognize the signature of Long, it is his signature, the assignment was written by J. B. Boggs. We made the purchase from Long in January 1860, and the assignment made certainly not later than Feb. 1860. *Cross Examined.* I recognize the signature to this assignment, *but dont remember of any such assignment being mad to us. It is Long's hand writing.*

112 Plaintiffs next recalled J. B. Boggs, stated that the assignment was made in my office and acknowledged before and certified by me, Stewart was present and I think it was delivered to Stewart & Scroggs, that is the assignment; there was a prior agreement between Long and Stewart & Scroggs about the sale to them, which was destroyed, I think when this assignment was made.

G. C. Lanphere was sworn for Plaintiffs, and on examination of the assignment marked "*G.*" Said he had had the paper over a year; received it from Stewart in May or June, 1861.

Plaintiffs then offered the assignment. Defendant objected. Court overruled objection and let in the assignment, Defendant excepted. The assignment is as follows substantially:

109 "KNOW ALL MEN BY THESE PRESENTS, that I, Charles L. Long, of Galesburg, Ill., assignee of mortgage of Wm. H. Marvel to John Riggan to secure payment of \$2000, dated Nov. 6th, 1856, in consideration of \$100 paid by Stewart & Scroggs, receipt of which is acknowledged, grant and assign to Stewart & Scroggs, his heirs and assigns, the said mortgage, the estate therein mentioned and debt secured thereby. To have and hold the same to said Stewart & Scroggs, their heirs and assigns to them and their use forever, subject to redemption, according to law.

"Dated July 7, 1860.

CHARLES LONG, [SEAL.]

111 Acknowledged before J. B. Boggs, Notary Public, July 7th, 1860, by Charles L. Long.

112 Plaintiffs here rested. Defendant moved the Court for non-suit, because Evidence did not show any cause of action.

113 Court overruled motion. Defendant excepted.

Defendant to maintain the issue on its part, offered in evidence the application for Policy with conditions attached to Policy, which were given in evidence without objection, which are as follows:

6
MEW ENGLAND FIRE & MARINE INSURANCE CO.
Of Hartford, Conn.

No.

Survey of dwelling in the City Galesburg, County of Knox, and State of Illinois.

The estimated value of each *Building* and of *Personal Property*, and the amount to be insured on each, must be stated separately. When Property is contained in two or more buildings, the value and amount to be insured on each must be stated separately. When insurance is wanted on Personal Property, the same description of the building is required as if insurance is wanted on the building.

114 APPLICATION of of Galesburg, for insurance against loss or damage by fire, by the NEW ENGLAND FIRE AND MARINE INSURANCE COMPANY, in the sum of Nine Hundred Dollars, on the property specified: the value of the property being estimated by the Applicant.

	Sum to be Insured.	Valuation.	Rate
On their Mortgage Interest,.....	\$.....	\$.....	\$.....
On Building,.....	\$900.....	\$1,800.....	\$1.....
On.....	\$.....	\$.....	\$.....
On.....	\$.....	\$.....	\$.....

The Applicant will answer the following questions, and sign the same, as a description of the premises on which the insurance will be predicated:

SURVEY OF PREMISES.

- | | | |
|-----|--|---|
| 115 | 1. BUILDING—Where situated? Street and No?
Is it stone, brick, or wood? How many stories high? When built?
2. WALLS—Are the division walls of brick? Are they entire? Do they rise above the roof?
3. ROOF—What is it covered with? Is there a scuttle, and stairs to it?
4. Has it a lightning rod? If so, how high does it rise above the roof? Does it descend into the ground three feet?
5. What fuel is used? How are the ashes disposed of?
6. Are the stoves and pipes properly secured, and will you engage to keep them so?
7. Do the pipes enter a chimney? And is it built from the ground? Do pipes pass thro' wood partitions or floors? If so, how secured?
8. What material is used for light?
9. For what purpose is the building used? How many tenants?
10. Distance and materials of other buildings within 100 feet of the one to be insured? And how occupied?
11. What other insurance is there upon the property, and at what office? | 1. On Depot Street, (west side). Wood. Part 1 part 1½ story. 1856-7.
2. Situated on lot 3, block 52, in Galesburg.
3. Shingle. No.
4.
5. Coal and Wood. Thrown out.
6. Yes. Yes.
7. Yes. No. Yes. Tin Ventilator.
8. Fluid.
9. Dwelling. Keep some boarders.
2 tenants now—is not to be long.
10. South 50 feet is a 1½ story building, not used. East 5 rods is a 1 story warehouse
11. None. |
| 116 | 12. Is the property mortgaged? And to what amount? Is there any insurance by the mortgagee?
13. Is any other party interested in the property?
14. Have you ever suffered loss of property by fire? If so, were you insured, and in what office?
15. What are the facilities for extinguishing fires in the town?
[If the risk be on Merchandise.]
16. How often do you take an inventory? What was the date and amount of the last?
17. Are friction matches kept for sale? If so, are they kept in metal or earthen vessels and not exposing other property? It is agreed that Phosphorus is not be kept on the premises. | 12. The Mortgage interest is what we insure.
13. Yes.
14. No.
15. Engine. Hook and Ladder Company.
16.
17. No. |

117 And the said applicant hereby covenants and agrees to and with said Company, that the foregoing is a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, and value of the property to be insured, so far as the same are known to the applicant and are material to the risk.

Dated March 17th, 1859.

M. A. WETMORE & CHARLEY LONG, Applicant.

For 12 months at 1 cents, premium \$9.

[22] Make a diagram of the premises on the other side of this sheet.

QUESTIONS TO BE ANSWERED BY AGENT.

1. Has this Company any other insurance }
within 100 feet, if so, how much, and for } ...No.....
whom? }
2. Have these premises, to your knowledge ever }
been on fire? } ...No.....
}
3. Please give any other information relating to }
the risk, that we should know. }

REMARKS OF AGENT.

.....

.....

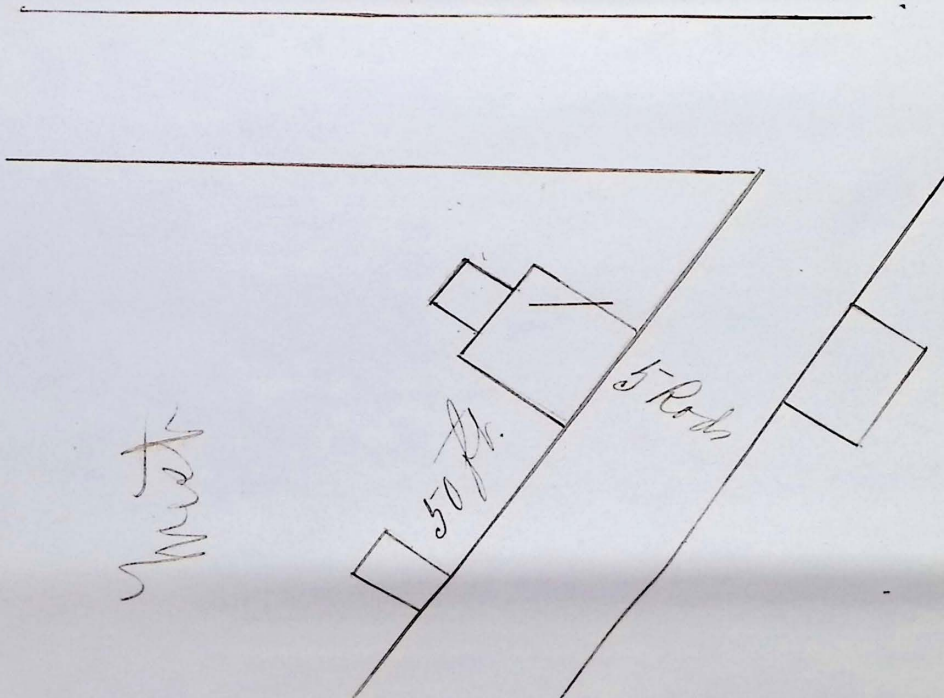
.....

J. P. DORMAN, Agent.

DIAGRAM.

Use red ink for brick or stone buildings and black ink for frames.

NORTH.



SOUTH.

Agents will be particular in noting all buildings within eight rods, of what material constructed; also the distances from each other, and for what purposes occupied.

CONDITIONS OF INSURANCE.

1. APPLICATIONS for insurance on property must be in writing and must specify the construction and materials of the buildings to be insured, or containing the property to be insured; by whom occupied; whether as a private building or how otherwise; its situation with respect to contiguous buildings, and their construction and materials; and whether any manufactory is carried on within or about it, and, in relation to the insurance of goods and merchandise, whether or not they are of the description denominated *hazardous, extra hazardous, or included in the memorandum of special hazards*.
If any person insuring any building, goods or other property in this Office, shall make any misrepresentation or conceal-

ment, or omit to make known any fact or feature in the risk which increases the hazard of the same, or over-value the same, or if, after insurance is effected, either by the original policy or by the renewal thereof, such buildings or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, or if the risk be increased by any means whatever, within the control of the assured, 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 insured, or his representative, of their intention to do so; in which case the Company will refund a ratable proportion of the premium.

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

III. 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 set forth in the preliminary proofs of such loss, together with their respective interests therein.

Goods on storage must be separately and specifically insured.

If the interest in property to be insured be a lease-hold 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.

NOTE.—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.

IV. Policies of insurance subscribed by this Company, shall not be assignable without the consent of the Company expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy, or of any interest in it, the liability of the Company, in virtue of such policy, shall thenceforth cease; and the Company reserves to itself the right to elect either to consent to the transfer, or return a ratable proportion of the premium and cancel the Policy.

In case of claim for loss or damages on a Policy assigned, 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 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.

V. Notice of all previous insurance upon property insured by this Company, shall be given to them and endorsed on this Policy, or otherwise acknowledged by the Company in writing, at or before the time of their making insurance thereon; otherwise the Policy subscribed by this Company shall be of no effect. And in case of subsequent insurance on property insured by this Company, notice thereof must also, with all reasonable diligence be given to them; to the end that such subsequent insurance may be endorsed on the Policy subscribed by this Company, or otherwise acknowledged in writing; in default whereof such Policy shall thenceforth cease and be of no effect. And in all cases of Insurance, this Company shall be liable only for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.

VI. 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 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 the insurers of the subject insured.

This Company will not be liable for loss or damage caused by lightning, except that which results 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.

VII. Books of account, written securities or evidences of debt, title deeds, writings, and money or bullion, are not deemed objects of insurance.

VIII. Jewels, jewelry, precious stones, watches, plate, medals, musical instruments, [piano fortes in dwelling houses excepted,] printed music, scientific instruments, paintings, prints, engravings, statuary, sculptures, curiosities, casts and models, are not included in any insurance, unless particularly specified in the Policy.

IX. Persons sustaining loss or damage by fire, are forthwith to give notice thereof in writing to the Company or its Agent; and as soon after as possible they shall deliver as particular an account of their loss and damage, as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath of 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 of each Company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner [as to trade, manufactory, merchandise, or otherwise] the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also produce a certificate under the hand and seal of a Magistrate, Notary Public, or Commissioner of Deeds, (most contiguous 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 acquainted with the character and circumstances of the insured or claimant, and that he verily believes that he, she, or they, have by misfortune, without fraud or evil practice, sustained loss and damage on the subject insured, to the amount therein mentioned, which such magistrate, notary public or commissioner of deeds shall certify.

When merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order, as the nature of the case will admit, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods; 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, one-half of the appraisers' fee to be paid by the insurers, and 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, or person claiming, shall produce and exhibit his books of account and other vouchers, to the insurers or their agent, at the office of this Company, in support of his claim, and permit extracts and copies thereof to be made; and shall also exhibit to any persons named by the Company, and shall permit to be examined by them, any property damaged on which any loss is claimed, or any property saved, which was insured by this Policy. And until such declarations, certificates and proofs, full and satisfactory to the Company, are produced, and such appraisals and examination of property and exhibit of books are permitted by the claimant, the loss shall not be payable. Re-insurance for any other Insurance Company, to be on the basis of joint liability with said Company, and in the event of loss, this Company to pay their pro rata proportion of said loss.

All frauds or false swearing, shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurers on this Policy.

X. 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 quality, and to rebuild, or to repair the building or buildings within a reasonable time, or to take the property at appraised value; giving notice of their intention so to do within sixty days after having received the preliminary proofs of loss required by the ninth article of these conditions. In case differences shall arise concerning the amount of any loss or damage by fire, the matter shall, at the written request of either party, be submitted to the judgment of disinterested arbitrators mutually chosen, whose award in writing, as to the amount of such loss and damage, shall be binding on the parties. Payment of losses shall be made in sixty days after the loss shall have been ascertained, and full and satisfactory proof received by the Company.

XI. Insurance once made, may be continued for such further time as may be agreed on, the premium required therefor being paid, and endorsed on the Policy, or a receipt given for the same; and all insurances, original or renewed, shall be

considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, where the risk has been changed, either within itself, 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 or occupation of the premises insured or of the neighboring premises, the assured shall fail to give information thereof, said Policy and renewal shall be void and of no effect.

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

XIII. 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 the insurers, in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

129 XIV. The Company will not be answerable for any loss arising from the use of open lights in barns, or where shavings are made, or 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. In case of loss, the assured shall assign to this Company all his right to recover satisfaction therefor from any other person or persons, town or other corporation, with a power of attorney to sue for and recover the same at the expense of this Company. And if insured as a mortgagee, he or they shall assign to the Company the mortgage upon the premises insured, together with the debt secured thereby, or so much thereof as will be sufficient to pay said loss. And a refusal to execute such assignment shall operate to discharge this Company from all liability under this contract.

XV. 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 sustainable in any Court of Law or Chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any such suit or action shall be commenced against said Company, after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

CLASSES OF HAZARDS.

NOT HAZARDOUS.

130 Staple Foreign DRY GOODS in packages, and Staple Domestic Dry Goods, in stores where no hazardous merchandize 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 TRADES AND OCCUPATIONS, GOODS, WARES AND MERCHANDIZE are deemed hazardous, and subject the building and all its contents to an additional charge of 10 cents per \$100; they are:—China, or earthen or glass ware, or plate glass in boxes, crates or casks; eating houses or refectories, fire-crackers in packages, flax in bales, grocers' stock, gutta percha unmanufactured, hat ironing or trimming or pressing, hay pressed in bundles, hemp in bales, India rubber unmanufactured Manila grass in bales, oil, porter-houses, rags in packages, sail making, segar making, Sisal grass in bales, spirituous liquors, sugars, sulphur, tallow, wine dealers' stock, (not including wine in glass unpacked,) and wool.

131 THE FOLLOWING are considered hazardous on account of their liability to damage, and are charged 10 cents per \$100 in addition to, but not increase the rate of the building; they are:—Boots and shoes, brushes, (stocks of,) card printing, coffee, cotton batting and wadding, dry goods, (general stocks of,) flour, furs and peltries in packages, hardware and cutlery, 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, threshed grain, tin or sheet iron or copper ware, wine in casks, wine in glass in packages, window or plate glass in boxes, and generally all other stocks of merchandize, (in buildings where heat is not used for manufacturing,) not elsewhere enumerated.

EXTRA-HAZARDOUS.

132 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 20 cents per \$100; they are:—Alcohol, apothecaries' stock, band-box and paper box making, basket bleaching or making, basket-sellers' stock, blacksmithing, block and pump making, box repairing, brass turning and working, brush makers' stock, cabinet makers' stock, carving, china, earthen or glass-ware or looking-glasses with packing or unpacking, chocolate making, colormen's stock, coopering, copperplate printing, cotton in bales, cotton brokers' samples, daguerreotyping, drugs, (importers' stock, without inflammable acids or phosphorus,) essential oils, gilding, gutta percha goods, gun repairing, hat finishing (with use of fire heat to steam and block the bodies,) India rubber goods, lamp manufacturing, lime unslacked, liquor bottling, lithographing, morocco manufacturing, musical instrument makers' stock, oakum in bales, painters' stock, perfumers' stock, pitch, plumbing, and pewtering, pocket-book making, printing of newspapers and engravings, rags and junk shop stock, rosin, ship chandlery, spirits of turpentine, tar, tin or sheet iron or copper working, turning of wood, turpentine, umbrella making, upholstery manufacturing, varnish, and wooden ware sellers' stock.

133 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 building; they are:—Artificial flowers, booksellers' stock, cabinet ware, china earthen or glass ware, confectioners' stock, daguerreotypists' stock, furs unpacked, jewelers' stock, lamp sellers' stock, liquor in glass unpacked, milliner's stock, musical instruments and printed music, needles, optical and mathematical instrument makers' stock, pictures, and prints, precious stones, pocket-book makers' stock, silversmiths' stock silver and plated ware, straw goods, stationers' stock, toyshop-keepers' stock, watch-makers' stock and tools, window or plate glass unpacked, and wine in glass unpacked.

MEMORANDUM OF SPECIAL HAZARDS.

134 Acids, (nitric, sulphuric, muriatic and other acids causing ignition,) bakeries, bark-mills, bleaching works, blind-makers' shops, book-binderies, boat-builders' shops, brass foundries, breweries, brimstone works, brush manufactories, cabinet makers' shops, chair makers' shops, carpenters' shops, candle manufactories, camphine on sale, copper smiths' shops with forges, coffee and spice mills, chemical laboratories, coach makers' shops, comb manufactories, confectionery manufactories, corn kilns, cotton mills, cotton presses, cotton unpacked, distilleries and rectifying establishments, dyeing establishments, druggists' stock, (wholesale,) drag and spice mills, ether, fur dressing establishment, fire works fire-work manufactories, flax-mills, floor cloth manufactories, fringe manufactories, ink manufactories, iron foundries, ivory-black and lamp black manufactories, lime yards and sheds, livery stables, and lumber-yards, looking-glass and picture frame manufactories, machine shops, mahogany yards, malt houses, matches manufactories, metal mills, musical instrument manufactories, oil-boiling houses, oil-cloth manufactories, oiled clothing manufactories, oil mill and manufactories, omnibus stables, plating, plated ware manufactories, packing buildings and yards, paper mills, paper hangings manufactories, percussion cap manufactories, perfumery manufactories, planing or grooving or moulding mills, powder mills, printing of books and job printing, phosphorus, rope and cordage manufactories, safe (iron) manufactories, stove manufactories, salt petre, sash makers' shops, saw mills, soap manufactories, silversmiths' manufactories, snuff mills, spirit gas manufactories and spirit gas on sale, stables, stove yards, steamboats, steam engines in use, sugar refiners, tobacco manufactories, type and stereotype foundries, tallow melting establishments, tanneries, tar-boiling houses, theatres and other places of public exhibition, timber yards, turpentine distilleries, varnish manufactories, wool mills, wheelwrights' shops, and generally all mills and manufacturing establishments, and all trades and occupations requiring the use of fire heat, not before enumerated.

135 **Camphene, Spirit Gas or "BURNING FLUID,"** when used in stores, warehouses, shops or manufactories, as a light, subjects the goods therein to an additional charge; and permission for such use must be indorsed in writing on the Policy.

Gunpowder, Phosphorus and Saltpetre are expressly prohibited from being deposited, stored or kept in any building insured or containing any goods or merchandize insured by this Policy, unless by special consent in writing on the Policy.

Fences and Privies, also Store Furniture and Fixtures, must be separately and specifically insured.

135 Defendant also gave in evidence sworn statement of Stewart & Scroggs with certificate attached to appraisal-
ment of appraisers, and their assessment, which is as follows:

136 "To the New England Fire and Marine Insurance Company of Hartford, Connecticut.

STATE OF ILLINOIS, }
COUNTY OF KNOX, } SS
CITY OF GALESBURG }

"Be it known that on the 29th day of March, A. D. 1861, before me, J. B. Boggs, a Notary Public, legally qualified
"for the city and county aforesaid, personally appeared John C. Stewart and Joseph C. Scroggs, who being duly sworn, de-
"clare under oath, that the *New England Fire and Marine Insurance Company, of Hartford, Connecticut*, through its agency
"at Galesburg, did, on the 17th day of March, 1859, issue to M. A. Wetmore and Charles Long, their policy of Insurance
"No. 2, the written body of which, with its immediate contents and writing endorsements and statements of Renewal of
"said policy are as below specified, said Insurance terminating March 17th, 1861, at noon.

NO. 2. \$900.

"By this policy of insurance the New England Fire and Marine Insurance Company, in consideration \$900 to them
"in hand paid by the assured herein named, the receipt whereof is hereby acknowledged, do insure M. A. Wetmore and
137 "Charles Long, of Galesburg, Knox County, Ill., against loss or damage by fire to the amount of \$900, for one year on
"their mortgage interest on a *boarding house* on the west side of Depot street in said Galesburg, on Lot 3 and Block 52, and the
"said company for the consideration aforesaid, hereby promise and agree to make good to the assured, their executors, admin-
"istrators and assigns, all such loss or damage not exceeding in amount the sum insured as shall happen by fire to the pro-
"perty as above specified from the 17th March 1859 (at 12 o'clock at noon) until 17th March 1860, (at 12 o'clock at noon) &c., &c.
"In witness whereof the New England Fire and Marine Insurance Company have caused these presents to be signed by
"their President and attested by their Secretary in the city of Hartford. N. M. WATERMAN, President.

GEO. D. JEWETT, Secretary.

"Countersigned at Galesburg this 19th day of March 1859.

J. P. DORMAN, Agent.

138 "The New England Fire and Marine Insurance Company hereby consent that the interest of M. A. Wetmore in the
"within policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to Charles Long
"Galesburg, March 31, 1859. J. P. DORMAN, Agent."

"For value received I hereby transfer assign and set over unto Charles Long and his assigns all my title and
"interest in this policy, and all advantage to be derived therefrom. Witness my hand and seal this 31st day of March,
M. A. WETMORE,
"1859. G. H. WETMORE."

"January 26th, 1860, the said policy No. 2 was regularly assigned in writing to Stewart & Scroggs by Charles
"Long, which assignment was attached to said policy, which has been lost, which assignment is regularly noted on the
"books of the Galesburg Agency."

"New England Fire and Marine Insurance Company, of Hartford, Renewal Receipt No. 5, Galesburg Agency,
139 "Received of Stewart & Scroggs seven 50-100 dollars, being the premium on six hundred dollars, insured under policy
"No. 2, which is hereby continued in force for one year, to wit: From the 17th day of March 1860, until the 17th day
"of March 1861, at noon. N. M. WATERMAN, President.

"Geo. D. JEWETT, Secretary."

"Countersigned at Galesburg, this 19th day of March, 1860,

J. P. DORMAN, Agent.

"And besides that insurance there was no additional insurance made thereon, the whole cash value of the property
"so insured being our mortgage interest, amounted on the 14th day of March 1860 to the sum of \$1422, 53-100 dollars,
"and interest up to this date, and there has been no payment made on said mortgage so insured since the 14th day of
"March 1860. The building prior to our purchasing the mortgage, we do not know by whom, or whether it was occu-
"pied at the date of the assignment of policy to us, and also the renewal on the 17th March 1860, and until the month of
140 "April the house was vacant. Michael Huestes occupied it for some five months. It was occupied by — Button until
"the month of January, as a *boarding house and saloon*, and by John Dempsey up to the 15th of February for the same
"purpose. From and about the 15th February up to the time of the fire it was vacant and unoccupied, which fire occurred
"on the night of the 9th day of March, near 12 o'clock, as we can learn upon an inquiry; and how it originated is unknown
"to us. The said building was totally destroyed. That the statement of the particulars of the account of loss and facts set
"forth in the above statement are believed to be just and true, and the mortgage specified above belongs to us.

JOHN C. STEWART,
JOSEPH C. SCROGGS."

"John C. Stewart and Joseph C. Scroggs having been duly sworn and subscribed the preceding declaration and
"affidavit, I have in witness thereof set my hand and seal of office in the State, county, city, and date aforesaid.

J. B. BOGGS, Notary Public.

141 STATE OF ILLINOIS, }
COUNTY OF KNOX, } SS
CITY OF GALESBURG }

"I, J. B. Boggs, a Notary Public in and for said city and county, residing most contiguous to the property of John
"C. Stewart and Joseph C. Scroggs insured as set forth in the preceding affidavit, certify that I am not concerned in that
"loss or have any claim, either as a creditor or otherwise, or related to the insured or sufferers, and that I am acquainted
"with the character and circumstances of Stewart & Scroggs, having made diligent inquiry into the facts set forth in the
"foregoing statement, and believe and know that they really by misfortune, without fraud or evil practice, sustained by
"the described fire, loss and damage to the amount of \$600, the sum stated in the affidavit of 1 ss. In testimony whereof
"I have hereunto set my hand and official seal, this 29th day of March 1861. J. B. BOGGS,

[L. S.]

Notary Public.

142 "Defendants then swore as a witness *Henry Moore*, who stated he knew the property in controversy; knew what
"the building was used for at the time of the fire—Premises had been used for a *Saloon* from July 1860, to the latter
"part of the winter of 1861. *Beer, candy, and such articles as are usually kept in a Saloon were sold there; they used*
"in the building glass lamps with fluid. *Houston* opened first in part of the building and kept a shoe shop, a *Sweed*
"man kept in the other part of the building a *Saloon*, then. *Button* occupied it. *I have seen beer there, once found a bottle of*
"Whisky in the saloon; *I have had a Warrant for Button for selling whisky, and a search warrant, and there was a small*
"room in the rear of the building used as a stable, a part of the same building—*have seen hay in that small room, a horse*
"was kept in it during the winter of 1860 and 1861 about six months; *there was hay and grain in the room where the*
"horse was kept, for feed, there was a sort of partition or some boards up in the room to keep the horse in. I have seen

143 "strang women there ; women of bad character, at different times, have seen them there often. I was marshal of the city ; have seen the women there as late as 10 o'clock at night ; their character was bad."

Witness cross examined by plaintiffs, and stated Button was there from four to six months, dont know whether the same women remained there all the time, dont think he kept them there ; Dempsey was the last occupant. The building had been vacant for three or four months before the fire, Houston kept there for a short time. Button was there six months ; I should think he went there in the fall. Stable joined in rear of the building, a few boards were put up in the rear room to keep the horse in ; it was a continuation of the same building ; was there in 1860 and 1861. Button acknowledged liquor had been sold there, have seen beer sold there, know of cigars being sold there. Button called the horse his own. I suppose he was there as a tenant. Women were often there, I considered them such as would take the advantage. Liquors were precluded being sold in the city, beer was sold there. The sign on the house being out as a boarding house.

144 Defendants next swore Jefferson Farmer, who stated upon his voir dire : I have no interest in the result of this suit ; am general agent of the company. Have no contingent interest whatever. And then swore in chief without objection, that he received the following letter from Mr. Dorman, purporting to come from Lanphere, one of the Plaintiffs attorneys :

"Jefferson Palmer, Esq., General Agent N. E. Ins. Co.

Galesburg, July 23d, 1860.

"DR. SIR :—Your favor to Mr. Dorman in regard to the claim of Stewart & Scroggs has been considered by them and they have directed me to answer it, and accept of your proposition, on condition that they are not to be called on to pay any of the Court costs in obtaining the decree. They have already commenced suit against your company, which will be withdrawn if this arrangement is completed. Respectfully Yours,

G. C. LANPHERE."

145 I saw Stewart in July 1861, told him it was necessary for them to assign his mortgage interest to the company, and I received the letter from Mr. Lanphere in reply, and received the assignment in Nov., 1861, dated Nov. 25th, 1861. Which is as follows : "In the Knox County, Illinois, Circuit Court, Bill in Chancery to foreclose Mortgage, Decree of Foreclosure, June 6th 1860, for \$1422,53 and cost of suit. Charles L. Long, Complainant vs., William H. Marvel et al., Defendant.

"In consideration of the sum of six hundred dollars, to us in hand paid by the New England Insurance Company. We John C. Stewart and Joseph C. Scroggs, assigns of the above mentioned mortgage and notes and of the said decree obtained in the said court, do hereby assign, transfer and set over unto the said Insurance Company without recourse to us, the above mentioned decree, notes and mortgage, and do hereby fully authorize and empower the said Company to collect and receipt for the same.

146 "Witness our hands and seals this 25th day of Nov., A. D., 1861.

JNO. C. STEWART, [Seal.]

JOSEPH C. SCROGGS, [Seal.]

I never saw the other assignments of the mortgage interest or decree, nor one of July 15th, 1861. I had a conversation with Stewart and he procured an abstract of title and said he could not assign the mortgage, that he had no interest in it, and that I had no right to demand it. I should have known if one had been tendered the Company in July 1861, for I was at Galesburg, and saw Mr. Stewart there after the 15th of July, 1861, I think towards the last of the month ; Stewart refused to assign mortgage interest in March, 1861, also in July, 1861.

Cross examined by Plaintiffs. Stated Stewart denied the right of the Company to demand the assignment. He said we had no right to claim it. I never submitted or showed the assignment sent me to the Company. He did not have an absolute title. I received the assignment the latter part of the month by mail. Am not certain whether it was from Lanphere, Stewart & Scroggs or Dorman. I have seen Mr. Waterman's letters for four years, have never seen him write.

147 Defendant next moved Merin Ransom, who stated that his recollection corroborated Mr. Farmer so far as Stewart's denying the right of the company to demand an assignment of the notes and mortgage. Also that Stewart said he could not assign the mortgage—not having any absolute title. Farmer, Dorman, Stewart, Ford and myself were present at that conversation which I think was in March, 1861.

Defendant next gave in evidence assignment set out heretofore and testified about by Farmer, Signature being admitted, also letter of G. C. Lanphere referred to and set out in Farmer's evidence, signature being admitted.

Defendant here rested.

148 The plaintiff next offered in evidence without objection the following letter :

"GEO. C. LANPHERE, Esq. Galesburg, Ill., DEAR SIR :

"HARTFORD, CONN., June 19th, 1861.

"Your favor of 14th inst., is at hand, have directed a Mr. Farmer to look over the S. and S. matter again and report. Having insured S. and S. as mortgagees, we expect when they are paid, they can so manage the title as to place this company (to the extent of its payment) on the same footing as themselves. If Mr. Long has become possessed of a judgment which stands in their way, it is for them to remove such disabilities as they have been requested to do. When they have so done, they will have no cause to complain. But until they show that they can give us a good title we want no investment in their mortgage. Truly Yours,

N. M. WATERMAN, President.

149 The defendant then offered in evidence without objection the following letter of J. Farmer :

"CHICAGO, GEN. AGENCY, July 17, 1861.

J. P. DORMAN Esq. Galesburg, Ill. DEAR, SIR :

"We find it best to avoid litigation if possible and therefore wish you to inquire of Messrs Stewart & Scroggs, whether they will assign and transfer to the New England Fire and Marine Insurance Company of Hartford, Conn., the notes and mortgage and also the decree of sale in Chancery pertaining to the property on which they hold Policy No. 3 in said Insurance Company, on condition of said Insurance Company paying them the sum of \$600, their claim thereby, and of giving them a bond to refund to them all over the sum of \$600, that may be realized from said notes, mortgage and decree of sale. Very Truly yours,

JEFFERSON FARMER, Gen. Agent."

This was all the evidence in the case.

The Plaintiff asked the following instruction :

150 The Jury is instructed that the hitching of a horse in the building would not make the building more hazardous, under the conditions of insurance, unless in addition it was used as a common stable, and thereby brought within the condition of the policy.

Defendant objected and excepted to the giving of said Instruction.

Defendant asked the following Instructions :

Re- 5th. If the Jury believe from the evidence that the mortgage interest in said premises and policy at the time of the fire had been assigned to Stewart & Scroggs, and the assignment of the policy consented to by the Insurance Co.,

and that the Plaintiffs, Whetmore and Long, had no interest in said mortgage or decree at the time of the fire the Jury will find for Defendant.

6th. If the Jury believe from the evidence that the Plaintiff, Long and Whetmore were the owners of said mortgage interest insured in said premises, at the time of the fire, and that upon this trial they have not proven that they made the proofs to the defendant, as stated in Instruction No. 4, the Jury will find for the Defendant.

8th. If the Jury believe from the evidence that the said Stewart & Scroggs refused to make an unconditional assignment of said mortgage interest insured to Defendant at any time after the fire, the Jury will find for Defendant.

The Court refused to give Instructions No. 5, 6 and 8, and Defendant excepted.

Defendant also asked the following Instructions.

3d. If the Jury believe from the evidence, that on the 23d day of July, 1861, the said Stewart & Scroggs, through their attorney, G. C. Lanphere, refused to assign to Defendant all their interest, without imposing conditions upon said Defendant, in said assignment, then the Jury will find for the Defendant, unless they believe from the evidence that the Defendant afterwards and before the commencement of this suit, accepted an assignment of the mortgage interest in said property.

The Court refused to give said Instruction No. 3 and Defendant excepted. But the Court gave said Instruction No. 3 as modified by the Court, which is as follows:

3d. If the Jury believe from the evidence that on the 23d day of July, 1861, or at any other time after the fire said Stewart & Scroggs, by themselves, or through their attorney, G. C. Lanphere, refused to assign to Defendant, all their interest, without imposing unreasonable conditions upon said Defendant, in said assignment to said defendant, then the Jury will find for Defendant, unless they believe from the evidence that the Defendant afterwards, and before the commencement of this suit, accepted an assignment of the mortgage interest in said property. But the fact that Stewart & Scroggs insisted that they were not to be called on to pay any of the Court costs in obtaining a decree on the mortgage was not an unreasonable condition within the meaning of the first part of this Instruction.

To the giving of said instruction as modified the Defendant objected and excepted.

The Court, on motion of Defendant, gave the following instructions Nos. 1, 2 and 4.

1st. If the Jury believe, from the evidence, that a part of the building insured as a boarding house, was used and occupied as a stable since the execution of said Policy, and before the fire, without the written consent of said defendant, the Jury will find for the Defendant.

2d. If the Jury believe, from the evidence, that spirituous liquors were kept in a shop for sale in said insured building, without the consent of the Company in writing, after the execution of said Policy, and before the fire occurred, they will find for Defendant.

4th. Unless the Jury believe, from the evidence or from the admissions made by Defendant and read to the Jury, that the persons sustaining loss in the said building on said premises insured, gave notice in writing to said Company, or their agent, as soon after as possible, and delivered as particular an account of their loss or damage, as the nature of the case would admit, signed with their own hands, and accompanying the same with their oath or affirmation, declaring the said account to be just and true, and showing what other, if any insurance had been made on said property, and what was the whole cash value of the subject insured, and what was their interest therein, and in what general manner as to trade, merchandize, or otherwise, the building insured, and the several parts thereof were occupied, if occupied at the time of the loss, and who were the occupants of such building if occupied, and where and how the fire originated, so far as they know or believed, and also, produce a certificate, under the hand and seal of a Magistrate, Notary Public, or Commissioner of Deeds, most contiguous 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 had examined the circumstances attending the fire, loss or damage alleged, and that he was acquainted with the character and circumstances of the insured, or claimants, and that he verily believed that they had by misfortune and without fraud or evil practice, sustained loss or damage on the interest insured in said property to the amount in such certificate stated, which shall have been certified to by the said officer, the Jury will find for the Defendant.

The cause was then submitted to the Jury who returned the following verdict: "We the Jury find the issues for the Plaintiffs and assess their damages at the sum of six hundred and thirty-three dollars.

L. H. RITCHEY, Foreman."

Defendant excepted to the verdict and filed the following motion for a new trial and in arrest of judgment.

STATE OF ILLINOIS, } Knox Circuit Court,
KNOX COUNTY. } SS June Term, A. D. 1862.

George H. Wetmore, et al. }
vs } Assumpset.
New England Fire and Marine Insurance Co. }

The Defendant comes and moves the court for a new trial, and in arrest of judgment, for the following reasons, to wit:

1st. Because the declaration shows upon its face that the Plaintiffs had no interest in the property insured at the time of the fire.

2d. Because George H. and Mary A. Wetmore had assigned their interest in the Policy and Mortgage interest in said premises to said Long before the fire and before the commencement of this suit, which appears in the declaration and evidence.

3d. Because Stewart & Scroggs had the whole interest in said premises and Policy at the time of the fire as is averred in the Declaration and proven upon trial.

3d. Because Stewart & Scroggs had no interest in said premises at the time of the obtaining a Renewal Receipt of said policy.

4th. Because the Court permitted Joseph C. Scroggs to testify as a witness in said cause upon the trial.

5th. Because the Court permitted the Plaintiffs to give in evidence the Policy without the application.

6th. Because the Court permitted the Plaintiffs to give in evidence an assignment to the New England Marine and Fire Insurance Company tendered to Defendants and refused by them.

7th. Because Court permitted Plaintiffs to give in evidence an assignment to said Stewart & Scroggs dated July 7th 1860, executed by Charles Long.

8th. Because the Court admitted in evidence a Renewal Receipt to Stewart & Scroggs, when they had no interest in the premises at the time of its date.

9th. Because the Court admitted in evidence an agreement between the Defendant and Stewart & Scroggs, and declaration of appraisal without the attached proof of loss.

- 10th. Because the evidence did not show any proof of loss made by Plaintiffs to Defendant before the commencement of this suit, or at any other time.
 - 11th. Because the Court refused proper instructions asked by defendant.
 - 12th. Because the Court gave improper instructions for the plaintiffs.
 - 13th. Because the Court refused instructions as asked by defendant, and gave them as modified by the Court.
 - 14th. Because the Court permitted improper evidence to go to the jury.
 - 15th. Because the Court overruled the defendant's motion for a non suit.
 - 16th. Because the verdict of the jury was against the evidence.
 - 17th. Because the verdict was against the law.
 - 18th. Because the verdict was against the instructions given by the Court.
 - 19th. Because the evidence proved conclusively that the building insured as a boarding house was changed and a part of it occupied as a *stable* and a horse kept in it for six months with hay and food for the horse during the winter of 1860 and 1861.
- TYLER & RANSOM, Attorneys for Defendant.
- The Court overruled the motion for new trial and in arrest of judgment, and rendered judgment on the verdict.
- A. TYLER, Attorney for Appellant.

¹⁹⁰
New England Fire &
Marine Ins. Co.
No

Geo. H. Metmore & Co.

Abstract

Filed Apr 22. 1863

L Delancey
clerk

SUPREME COURT.

April Term, A. D. 1863.

STATE OF ILLINOIS.

GEORGE H. WETMORE,
MARY A. WETMORE,
AND
CHARLES LONG,
Appellees,
ads.
NEW ENGLAND FIRE
AND MARINE INSU-
RANCE COMPANY,
Appellant.

Brief and Points made
by Appellee.

DOUGLASS & CRAIG and
GEORGE C. LANPHERE, At-
torneys for Appellees.

PAGES OF RECORD. ⁸¹—On the 6th of November, 1856, Wm. H. Marvell executed
⁸² notes to John Riggini to the amount of \$2,000, and executed
⁸³ a mortgage on lot No. 3, block 52, in Galesburg, to Riggini,
⁸⁶ March 10th, 1859. John Riggini assigned two of the notes
and the mortgage to M. A. Wetmore and Charles Long, on
the 19th day of March, 1859.
⁸⁹ The defendants issued their Policy to Wetmore and Long,
⁸⁶ insuring their Mortgage Interest on the 25th of March, 1859.
M. A., and George H. Wetmore, her husband, assigned the
mortgage to Long, and endorsed the notes, on the 31st day of
⁹⁴ March, 1859. Wetmore and wife assigned the Policy to
⁹⁴ Long, with defendant's assent. In February, 1860, Long sold
⁹⁵ his mortgage interest to Stewart & Scroggs, and assigned
the policy to Stewart & Scroggs, with defendant's consent.
⁹⁶ On 17th March, 1860, renewal receipt was issued to Stew-
art & Scroggs for one year, and during the year the fire oc-

surrendered, and this suit is brought on the Policy for collection of the loss.

1st. It is insisted that there cannot be any recovery in this case, because prior to the fire a part of the building had been used as a stable for a horse, during the time insurance was in force.

142 Henry Moore testified that for about six months in winter of 1860 and 1861, a part of the building was used for a stable for one horse, and had seen hay and grain there. The building was vacant at time of the fire.

9 The language of the Policy as to the using and appropriating the premises to uses not contemplated by the Policy and Application, is as follows: "And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time, after the making of and during the time this Policy would otherwise continue in force, be 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 terms and conditions annexed to this Policy, or for the purpose of storing therein any of the articles, goods or merchandize in the same terms and conditions denominated hazardous, extra hazardous, or included in the memorandum of special hazards, except herein specially provided for or hereafter agreed to by this company in writing, to be added to or endorsed upon this Policy. Then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease, and be of no force and effect." This provision is not that the policy shall be void in case the premises are so used and employed, but on the contrary it is declared and agreed to be the intent and meaning of the parties that it shall be void, or in other words, the insurance stand in obedience during the period of such use and occupation. But it is said that use is in violation of the first condition annexed to the Policy, which provides, "If after insurance is effected, either by the original policy or by the renewal thereof, such buildings or premises

" shall be occupied in any way so as to render the risk more
 " hazardous than at the time of insuring, or if the risk be in-
 " creased by any means whatever, within the control of the as-
 " sured, such insurance shall be void, and of no effect."

Is this condition to apply to this case after the increased risk has ceased? In order to ascertain this, we must go to the contract of the parties. By the express terms of the policy we find that this condition is not to apply. The policy reads:

92 " And that this policy is made and accepted in reference to
 " the terms and conditions hereto annexed, which are to be
 " used and resorted to in order to explain the rights and obli-
 " gations of the parties hereto, in all cases not herein otherwise
 " especially provided for."

This provision excludes the idea that the conditions are to govern in a case specially provided for in the face of the Policy.

The conditions are a part of the contract of Insurance, so far as the contract of the parties make them so, and no farther. This condition is not to be resorted to in this case, then, because the contract of the parties, expressed in the face of the Policy, is *not* that the Policy shall be absolutely void, in the case named, but suspended, or held in obedience only, so long as the increased risk shall continue. If the condition is to operate then, it must be construed with the other and further provisions in the Policy, and thus the conditions will be qualified by the further provision in the policy, and then both provisions are reconcilable and consistent with each other, and this use of the building will not avoid the Policy, for the proof shows that the building was vacant for the space of three or four months prior to the fire. See evidence of Moore.

143 If the condition is to govern, then, a part of the Policy is to be excluded, for the purpose of giving effect to the condition so as to avoid the Policy in this respect. It was held that the Policy was not avoided in a paralel case. In that Policy It was provided, that if the building should be appropriated, applied or used to or for the purpose of keeping or

“ storing therein extra hazardous articles, then, and so long as
 “ the building should be so used, the Policy should cease and
 “ be of no further effect.” During the existence of the Policy
 this provision had been violated, by storing or using the
 building otherwise than permitted, but it was not so used at
 the time of the fire. It was held that the Policy was good.
 [Lounsburry versus Protection Ins. Co., 8 Conn., 459.]

In opposition to the case last cited, the court is referred to
 a case decided in New York, 3 Selden, 530. In this the de-
 cision of the court is placed on the ground that the contract
 was a warranty, that the building should not be used in a
 manner not permitted, or contemplated in the contract. We
 think the putting of the reason for this decision on this
 ground, is not founded in reason, for we cannot see how
 there can be a warranty, without a contract, and surely it is
 no part of the Policy or conditions, that the building should
not be appropriated or applied, &c., but only, that in case it
 should be so used, then, for the time being, the Policy
 should be void. It would seem that the case was not in such
 a condition before the court, as to call for a decision of this
 character. The Defendant offered to prove that there was
 in the building, at the time of the fire, articles prohibited,
 and the court refused the evidence, and for *this reason* the
 judgment was reversed. As to all that is said about a war-
 ranty, the decision is a mere dicta. There is nothing in the
 Policy, or conditions, or applications, that makes any part
 thereof warranties, on the part of the assured.

No mere representation, made by the assured, is a war-
 ranty. [Hall versus Howard Ins. Co., 14 Barbour N. Y.,
 383.]

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Whether the risk had been increased, or whether the building had been so used as to increase the risk, was a question of fact for the jury, and its finding on that point cannot be be disturbed. [Tyler vs. *Ætna Ins. Co.* 12 Wendell 507. *Farmer's I. & L. Co. vs. Snyder*, 16 Wendell N. Y. 481. *Grant vs. Howard Ins. Co.*, 5 Hill N. Y. 10. *Percival vs Maine M. M. Ins. Co.*, 33 Maine 242. *Gamwell vs. Merchant's F. M. Ins. Co.*, 12 Cushing 167. *Curry vs. Commonwealth Ins. Co.*, 10 Pick. 535, 29 Maine 97, 4 Mass., 330.]

It is insisted that liquor was found in the building, and that it is prohibited by the conditions, and therefore the Policy is void. I cite *Raferty vs. New Brunswick F. Ins. Co.*, 3 Harrison N. J. 480.

This suit is brought for the benefit of the assignee of a mortgage interest, and the assignment was made with the consent of the Defendants.

" If a Policy has been assigned to a mortgagee of the mortgaged premises, with the assent of the company, a violation of the conditions, such as would avoid the Policy in the hands of the original insured, will not prevent the mortgagee from recovering to the extent of his interest." 7 Barb. N. Y. R. 570. See also 2 Gray Mass, 216, 9, Wen. N. Y. 404. 19 Barb. N. Y. 442.

“Where a Policy has been assigned with the consent of company, it is *no longer in the power* of assignor *to do anything* to impair the validity of the Policy in the hands of the assignee. [42 Maine R. 221.] Assured not responsible for the acts of others.

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It is insisted that the Plaintiffs in this suit had no interest in the subject of Insurance, and therefore no recovery can be had in their names.

First, the proposition is not correct in fact, for both notes
8/ were endorsed by George H. Wetmore and Mary A. Wet-
82 more, and they had an interest in the insurance as endorsers of the notes, and George H. Wetmore, being a stranger to the notes, by endorsing the same, was liable thereon as guarantor, and as such, interested in obtaining satisfaction of the notes with the insurance money.

Thus Policy was assigned by Wetmore to Long, and by Long to Stewart and Scroggs, and with the assent of the Defendant, and it is well settled that an action cannot be maintained on an Insurance Policy, in the name of the assignee, and that it can be maintained in the name of the insured. 3 Hill N. Y. 88; Compton vs. Jones, 4 Cowen 13; 1 Chitty's pleadings, 9, 10; Inness vs. Dunlap, 8 Tenn. R. 595; Currier vs. Hodgson, 3 New Hampshire, 82; Higgins vs. Dannel, 4 N. Hampshire, 69; Skinner vs. Somers, 14 Mass, 107; Mowry vs. Todd, 12 Mass., 281; Crocker vs. Whiting, 10 Mass., 316; Dubois vs. Doubleday, 9 Wendell, 317; Chitty on Contracts, 614, note 1, 5 Amer. edi.; Gran-ger vs. Howard Insurance Co.

The Policy in this case never contemplated an action in the name of the assignee. 3 Hill N. Y., 88.

There is no exception to the rule, at Common Law, that the action must be brought in the name of the assured, unless there is a provision in the Policy, charter or by laws, au-

thorizing an action in the name of the assignee. The following cases authorize it for some one or more of the reasons stated. In N. Y. under the Code I think it different. 3 Hill, 88; Mann vs. Herkimer Co. M. Ins. Co., 4 Hill, 187; Bodle vs. Chenango Co. M. Ins. Co., 2 Comstock N. Y., 53; Ketchum vs. Protection I. Co., 1 Allen, N. B., 136; Conover vs. M. Ins. Co., 3 Denio, 254, 1 Comstock N. Y., 290; Folsom vs. Belknap Co. M. Ins. Co., 10 Foster, N. H., 231. Peabody vs. Washington Co. M. I. Co., 20 Barbour N. Y. 339, 38, N. H. 232.

It is clear that where a Policy is assigned, with the assent of the company, the action must be brought in the name of the assured; and it is equally clear that the assured cannot deprive the assignee of his right to the insurance money, by conveying the property and divesting himself of all interest, so that the general proposition that the plaintiff must have an interest in order to allow the action to be prosecuted in his name, is not tenable in all cases. If it were then the assured, by conveying, the property, could defeat a recovery altogether in case of an assignment. Bragg vs. New England M. F. Ins. Co., 5 Foster N. H., 289.

Two were insured; one sold his interest in the property to the other; held that the action must be in the name of both. Tate vs. Citizens' M. Ins. Co., 13 Gray, Mass., 79; Tillow vs. Kingston M. Ins. Co., 1 Selden N. Y., 405; Hobbs & Hewly vs. Memphis Ins. Co., 1 Sneed, 444, 22 Ill.; Dix vs. Mercantile Ins. Co., 272, may be cited against a recovery on the ground of interest; that decision, as applicable to the facts of that case, is upheld by numerous cases. But it does not, on that question, apply to this. There the assignment that divested the interest, was in *violation* of a condition of Insurance, and avoided the policy. Here the defendants extend and continue the policy, knowing that the original insurers had, before then, parted with all their interest. It does not follow because the Insurer can not sue in his name, that an assignee cannot sue in his name. This is shown in numerous cases.

In this case, the mortgage and notes were assigned to Long

106 and Mary Wetmore and the policy given to them, as owners of
 107 the mortgage interest, and the notes and mortgage assigned
 107 by M. A. Wetmore and George H., her husband, to Long, and
 107 the policy assigned to Long by them with the assent of the
 108 company, and afterwards the notes, mortgage, Decree in Chan-
 cery sold to Stewart & Scroggs, prior to the date of renewal
 receipt, and the policy assigned to them with assent of the com-
 pany, and after the expiration of the policy, while Stewart &
 Scroggs were the owners of the mortgage interest, Stewart
 & Scroggs paid the premium on \$600, and procured a re-
 newal receipt, by the terms of which, the original policy was
 extended one year. An action will lie on the receipt in the
 name of Stewart & Scroggs, or it will lie on the original pol-
 icy, on *which* is the question. If it lies on the receipt, then
 it must be that the receipt is a contract within itself, to insure
 and indemnify against fire, &c. Does it contain within itself
 any agreement except that it revives and continues in force
 the old policy for one one year? If it revives and continues
 the old policy, then it does so, for all purposes, as fully
 as it was in force before it expired. It continues it for the
 benefit of Stewart & Scroggs. If an action cannot be main-
 tained in the name of Long and M. A. Wetmore, and George
 H., her husband, then there must be some rule or contract in
 the case, by which Long and Wetmore's names are excluded
 from the policy, and Stewart & Scroggs substituted, for if the
 old policy is not the contract of Insurance, then there is no
 contract, and Stewart & Scroggs are defrauded out of their
 money.

As we have already seen, when the charter or policy pro-
 vides that in case of an assignment the assignee may, on cer-
 tain terms, be let into and substituted to all the rights of the
 original party, on the fulfillment of the conditions, and after
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 bring suit in his own name. Why? Because then the con-
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"An insurance was effected by a father and two sons, under
 name of J. McGowen & Sons, for one year, with a covenant

that it should continue as long as the premium was paid and accepted. The father retired from the firm during the year, and the business was conducted by the two sons, under the same style. The day before the policy expired, the premium for the second year was paid, and a renewal receipt given on the policy, stating that the company had received the premium from J. McGowen & Sons, under policy No. 12704, which is hereby continued in force for another year. The company had no knowledge of the change of the firm. Fire within the year. Action in the name of the two sons. Held first, that the renewal receipt was not a parol and new contract, with other parties, on which action of assumpsit may be brought, but was simply an extension for another year of the original sealed instrument, and the plaintiff's, not being the covenantees, cannot maintain an action of covenant upon the policy. Second, that no action can be maintained on the contract, except by the parties insured. It is a joint contract, and no one of the parties can sue alone." Baltimore F. Ins. Co. vs. McGowan, 16 Maryland, 47."

It is objected that Stewart & Scroggs had no interest in the mortgage, at the date of renewal receipt. The receipt is dated March 17th, 1860. Joseph C. Scroggs testified that he and Stewart purchased the mortgage interest as early as February, 1860. The assignment in evidence signed by Long was dated July 7th, 1860, but the evidence of Boggs shows that the prior agreement was then surrendered.

It is insisted that Stewart & Scroggs failed and refused to assign the mortgage interest. The evidence of Josiah Gale and J. C. Scroggs, shows the tender of assignment, July 15th, 1861. Evidence of L. Douglass a tender Jan. 16th, 1862, and the defendants proved one in their hands, dated Nov. 25th, 1861, by evidence of Farmer.

One was tendered July 15th, 1861, and the letter of the General Agent required one July 17th, 1861.

It is objected that the court erred in allowing J. C. Scroggs to be sworn in chief, on the ground that he was interested; but when his evidence upon *voir dire* is understood and properly applied, it shows he has no interest.

It only appears that he might have had an interest when the assignment of his interest in the policy, with his interest in the notes, mortgage and decree are confounded. He had assigned his interest in the policy to McFarland, and his interest in notes, mortgages and decree to defendants, and it so appeared before the jury. That being the case he had no interest. It is objected that the court erred in allowing the policy to go in evidence without the application. It is a sufficient answer to say that the application was not necessary to make out the plaintiff's case. It is objected that the court erred in allowing the assessment of damages to be put in evidence, without putting in evidence the proof of loss, (that happened to be attached to it.) It is enough to say, that the proof of loss was admitted by stipulation, and need not to be proved otherwise. The same proof of loss was afterwards put in by defendant. It is objected now, for the first time, that the proof of loss is insufficient.

McMaster vs. Westchester Co. M. Ins. Co. 25, Wendell 379; Friemans Ins. Co. vs. Crandall, 33 Alabama 9; Francis vs. Summerville M Ins. Co. 1 Dnch N. J. 78, Kermehan vs. N. Y. B. F. Ins. Co. 17, N. Y. 428.

There was but one instruction given for the plaintiff, and it is insisted that it is erroneous. There is nothing prohibited only that which is specified; and a horse is not claimed as hazardous, therefore putting a horse there, would not increase the hazard under the conditions. If it was not used as a common stable, then the use was not prohibited, and the case was not within the condition. The instruction was clearly right. The fifth instruction of defendant is by this brief, and authorities already shown, not to be the law of the case. The sixth instruction should not have been given, and was properly refused, because there was no proof tending to show that the plaintiffs had the interest indicated.

The third instruction, as asked, was properly refused.

By the conditions of the policy, Stewart & Scroggs were only bound to assign as much of the mortgage debt as would be sufficient to cover the amount insured; for this reason the instruction was wrong, for it if given, would have in-

structed the jury that Stewart & Scroggs were bound to assign the entire mortgage debt. The modification is clearly correct ; for having assigned the claim it should not be prosecuted at their costs ; from that time defendants would occupy their position.

The 1st, 2d and 4th instructions given for defendants, we think, presented this case as strongly for the defendant as the case authorizes, and that there is no error in instructions only as against the plaintiff.

The record does not show that the demurrer was sustained to defendants—2, 3, 4, 5 and 6 pleas, and leave to amend ; this is shown by stipulation on file, and, perhaps, copied by the clerk into record.

If any question is made about demurrer going back to declaration, then the record shows leave to amend—the defendant agreeing not to demur. The abstract does not show the pages of record.

DOUGLASS, CRAIG & LYNPHERE,
Attys for Appellees.

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Supreme Court.

New England Abol. F. D. Soc.
N. Appellate

Gen. H. Motmore et. al.

Brig. of Appellate

Filed May 4, 1863,
S. C. and
Ch.

SUPREME COURT.

April Term, A. D. 1863.

STATE OF ILLINOIS.

GEORGE H. WETMORE,
MARY A. WETMORE,
AND
CHARLES LONG,
Appellees,
ads.
NEW ENGLAND FIRE
AND MARINE INSU-
RANCE COMPANY,
Appellant.

Brief and Points made
by Appellee.

DOUGLASS & CRAIG and
GEORGE C. LANPHERE, At-
torneys for Appellees.

PAGES OF RECORD.—⁸²On the 6th of November, 1856, Wm. H. Marvell executed
⁸²notes to John Riggin to the amount of \$2,000, and executed
⁸³a mortgage on lot No. 3, block 52, in Galesburg, to Riggin,
⁸⁶March 10th, 1859. John Riggin assigned two of the notes
and the mortgage to M. A. Wetmore and Charles Long, on
the 19th day of March, 1859.
⁸⁹The defendants issued their Policy to Wetmore and Long,
⁸⁶insuring their Mortgage Interest on the 25th of March, 1859.
M. A., and George H. Wetmore, her husband, assigned the
mortgage to Long, and endorsed the notes, on the 31st day of
⁹⁴March, 1859. Wetmore and wife assigned the Policy to
⁹⁴Long, with defendant's assent. In February, 1860, Long sold
⁹⁵his mortgage interest to Stewart & Scroggs, and assigned
the policy to Stewart & Scroggs, with defendant's consent.
⁹⁶On 17th March, 1860, renewal receipt was issued to Stew-
art & Scroggs for one year, and during the year the fire oc-

curred, and this suit is brought on the Policy for collection of the loss.

1st. It is insisted that there cannot be any recovery in this case, because prior to the fire a part of the building had been used as a stable for a horse, during the time insurance was in force.

142 Henry Moore testified that for about six months in winter of 1860 and 1861, a part of the building was used for a stable for one horse, and had seen hay and grain there. The building was vacant at time of the fire.

9 The language of the Policy as to the using and appropriating the premises to uses not contemplated by the Policy and Application, is as follows: "And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time, after the making of and during the time this Policy would otherwise continue in force, be 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 terms and conditions annexed to this Policy, or for the purpose of storing therein any of the articles, goods or merchandize in the same terms and conditions denominated hazardous, extra hazardous, or included in the memorandum of special hazards, except herein specially provided for or hereafter agreed to by this company in writing, to be added to or endorsed upon this Policy. Then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease, and be of no force and effect." This provision is not that the policy shall be void in case the premises are so used and employed, but on the contrary it is declared and agreed to be the intent and meaning of the parties that it shall be void, or in other words, the insurance stand in obedience during the period of such use and occupation. But it is said that use is in violation of the first condition annexed to the Policy, which provides, "If after insurance is effected, either by the original policy or by the renewal thereof, such buildings or premises

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" shall be occupied in any way so as to render the risk more
 " hazardous than at the time of insuring, or if the risk be in-
 " creased by any means whatever, within the control of the as-
 " sured, such insurance shall be void, and of no effect."

Is this condition to apply to this case after the increased risk has ceased? In order to ascertain this, we must go to the contract of the parties. By the express terms of the policy we find that this condition is not to apply. The policy reads :

92 " And that this policy is made and accepted in reference to
 " the terms and conditions hereto annexed, which are to be
 " used and resorted to in order to explain the rights and obli-
 " gations of the parties hereto, in all cases not herein otherwise
 " especially provided for."

This provision excludes the idea that the conditions are to govern in a case specially provided for in the face of the Policy.

The conditions are a part of the contract of Insurance, so far as the contract of the parties make them so, and no farther. This condition is not to be resorted to in this case, then, because the contract of the parties, expressed in the face of the Policy, is *not* that the Policy shall be absolutely void, in the case named, but suspended, or held in obedience only, so long as the increased risk shall continue. If the condition is to operate then, it must be construed with the other and further provisions in the Policy, and thus the conditions will be qualified by the further provision in the policy, and then both provisions are reconcilable and consistent with each other, and this use of the building will not avoid the Policy, for the proof shows that the building was vacant
 143 for the space of three or four months prior to the fire. See evidence of Moore.

If the condition is to govern, then, a part of the Policy is to be excluded, for the purpose of giving effect to the condition so as to avoid the Policy in this respect. It was held that the Policy was not avoided in a paralel case. In that
 " Policy It was provided, that if the building should be appropriated, applied or used to or for the purpose of keeping or

„ storing therein extra hazardous articles, then, and so long as
 „ the building should be so used, the Policy should cease and
 „ be of no further effect." During the existence of the Policy
 this provision had been violated, by storing or using the
 building otherwise than permitted, but it was not so used at
 the time of the fire. It was held that the Policy was good.
 [Lounsbury versus Protection Ins. Co., 8 Conn., 459.]

In opposition to the case last cited, the court is referred to
 a case decided in New York, 3 Selden, 530. In this the de-
 cision of the court is placed on the ground that the contract
 was a warranty, that the building should not be used in a
 manner not permitted, or contemplated in the contract. We
 think the putting of the reason for this decision on this
 ground, is not founded in reason, for we cannot see how
 there can be a warranty, without a contract, and surely it is
 no part of the Policy or conditions, that the building should
 not be appropriated or applied, &c., but only, that in case it
 should be so used, then, for the time being, the Policy
 should be void. It would seem that the case was not in such
 a condition before the court, as to call for a decision of this
 character. The Defendant offered to prove that there was
 in the building, at the time of the fire, articles prohibited,
 and the court refused the evidence, and for *this reason* the
 judgment was reversed. As to all that is said about a war-
 ranty, the decision is a mere dicta. There is nothing in the
 Policy, or conditions, or applications, that makes any part
 thereof warranties, on the part of the assured.

No mere representation, made by the assured, is a war-
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As we have already seen, when the charter or policy provides that in case of an assignment the assignee may, on certain terms, be let into and substituted to all the rights of the original party, on the fulfillment of the conditions, and after confirmation by the company, the assignee may, and must, bring suit in his own name. Why? Because then the contract of Insurance is with him alone, it is because the contract is that it shall be so.

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 " contract, except by the parties insured. It is a joint contract,
 " and no one of the parties can sue alone. Baltimore F. Ins.
 " Co. vs. McGowan, 16 Maryland, 47."

It is objected that Stewart & Scroggs had no interest in
 the mortgage, at the date of renewal receipt. The receipt is dated March 17th, 1860. Joseph C. Scroggs testified
 96, 107, that he and Stewart purchased the mortgage interest as early
 108 as February, 1860. The assignment in evidence signed by
 111 Long was dated July 7th, 1860, but the evidence of Boggs
 112 shows that the prior agreement was then surrendered.

It is insisted that Stewart & Scroggs failed and refused to
 106 assign the mortgage interest. The evidence of Josiah Gale
 108 and J. C. Scroggs, shows the tender of assignment, July
 15th, 1861. Evidence of L. Douglass a tender Jan. 16th,
 102 1862, and the defendants proved one in their hands, dated
 144 Nov. 25th, 1861, by evidence of Farmer.

One was tendered July 15th, 1861, and the letter of the
 General Agent required one July 17th, 1861.

It is objected that the court erred in allowing J. C. Scroggs
 107 to be sworn in chief, on the ground that he was interested ;
 but when his evidence upon *voir dire* is understood and
 properly applied, it shows he has no interest.

It only appears that he might have had an interest when the assignment of his interest in the policy, with his interest in the notes, mortgage and decree are confounded. He had assigned his interest in the policy to McFarland, and his interest in notes, mortgages and decree to defendants, and it so appeared before the jury. That being the case he had no interest. It is objected that the court erred in allowing the policy to go in evidence without the application. It is a sufficient answer to say that the application was not necessary to make out the plaintiff's case. It is objected that the court erred in allowing the assessment of damages to be put in evidence, without putting in evidence the proof of loss, (that happened to be attached to it.) It is enough to say, that the proof of loss was admitted by stipulation, and need not to be proved otherwise. The same proof of loss was afterwards put in by defendant. It is objected now, for the first time, that the proof of loss is insufficient.

McMaster vs. Westchester Co. M. Ins. Co. 25, Wendell 379; Friemans Ins. Co. vs. Crandall, 33 Alabama 9; Francis vs. Summerville M Ins. Co. 1 Duch N. J. 78, Kermehan vs. N. Y. B. F. Ins. Co. 17, N. Y. 428.

There was but one instruction given for the plaintiff, and it is insisted that it is erroneous. There is nothing prohibited only that which is specified; and a horse is not claimed as hazardous, therefore putting a horse there, would not increase the hazard under the conditions. If it was not used as a common stable, then the use was not prohibited, and the case was not within the condition. The instruction was clearly right. The fifth instruction of defendant is by this brief, and authorities already shown, not to be the law of the case. The sixth instruction should not have been given, and was properly refused, because there was no proof tending to show that the plaintiffs had the interest indicated.

The third instruction, as asked, was properly refused.

By the conditions of the policy, Stewart & Scroggs were only bound to assign as much of the mortgage debt as would be sufficient to cover the amount insured; for this reason the instruction was wrong, for it if given, would have in-

structed the jury that Stewart & Seroggs were bound to assign the entire mortgage debt. The modification is clearly correct ; for having assigned the claim it should not be prosecuted at their costs ; from that time defendants would occupy their position.

The 1st, 2d and 4th instructions given for defendants, we think, presented this case as strongly for the defendant as the case authorizes, and that there is no error in instructions only as against the plaintiff.

The record does not show that the demurrer was sustained to defendants—2, 3, 4, 5 and 6 pleas, and leave to amend ; this is shown by stipulation on file, and, perhaps, copied by the clerk into record.

If any question is made about demurrer going back to declaration, then the record shows leave to amend—the defendant agreeing not to demur. The abstract does not show the pages of record.

DOUGLASS, CRAIG & LANPHERE,
Attys for Appellees.

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Supreme Court

New England M. & F. L. Co.
v. Appellant

Wm. H. Hutton v. et al.
Appellants

Bring of Appellants

Filed May 4, 1863.
L. L. L. L.
Ch.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

NEW ENGLAND FIRE AND MARINE
INSURANCE COMPANY

vs.

GEORGE H. WETMORE *et al.*, for use of
JOHN MCFARLAND.

} *Appeal from Knox.*

APPELLANTS' BRIEF AND AUTHORITIES.

1st. This was an action of assumpsit commenced by *George H. Wetmore, Mary A. Wetmore and Charles Long* vs. the appellants, on a policy of insurance issued by them, March 19th, 1859, for one year, to *Mary A. Wetmore and Charles Long*, and on a *renewal receipt* issued to *Stewart & Scroggs*, March 19th, 1860, insuring them as assignees of John Riggis, who was a mortgagee of lot 3, in block 52, Galesburg, Ill., as a *dwelling house, with some boarders*. The notes and mortgage were assigned by Mary A. Wetmore and George H. Wetmore, her husband, to Charles Long, with consent of the company, March 25th, 1859, and policy was assigned by Wetmores to Long with consent of the company, March 31st, 1859. Long assigned policy to John C. Stewart and Joseph C. Scroggs, January 26th, 1860, with consent of the company. Long assigned all his interest in notes and mortgage to *Stewart & Scroggs*. *Assignment in evidence is dated July 7th, 1860*. They aver in declaration that at the time of the fire *John C. Stewart and Joseph C. Scroggs* were the owners of the entire interest in the notes, mortgage, re-

renewal receipt and policy. Property was burned between 9th and 10th March, 1860.

2d. The plaintiffs below had no interest in the property insured, policy, or *renewal receipt at the time of the fire*, and could not recover in this action.

Angel on Ins. P. 258, 9-60.
22d Ill. R. 272.
3d Denio R. 301.
4th Hill R. 187.
16th Peters R. 503.
3d Fairf. R. 44.
26 Conn. R. 165.

3d. The assignee of notes, mortgage and policy may bring suit in their own name.

Angel on Ins. p. 259, 60.
3d Metc. (Mass.) R. p. 66.
12 Mass. R. p. 281.
3d Md. R. p. 354.
5 Wend. R. p. 200.
8 Cush. R. p. 131.
8 Mass. R. p. 515.

4th. *The renewal receipt to Stewart & Scroggs was a new, valid and independent contract with them. If they had an interest in property at the time of the issuing the receipt, they must recover, if at all, in their own names.*

Angel on Ins. p. 259, 60.
3d Metc. R. p. 66.
8 Mass. R. 515.
2d Wood & Minot's R. 472.
5th Wend. R. p. 200.
12th Mass. R. p. 281.

5th. The Wetmores, having a joint interest in the policy and property at the time of its issuing, *having sold all their interest to Long, cannot maintain this action jointly with him.*

Angel on Ins. p. 443, Sect. 375.
2d Comst. N. Y. R. p. 210.
3d Denio R. 301.

The assignment of the notes and mortgage *alienated* all interest of the parties assigning, both legal and equitable.

23d Ill. p. 30.

6th. The *conditions annexed* to the policy and *application* are a part of the policy, and the stipulations in the policy are considered *express warranties*, and if the *risk is changed* the *policy is void*, and it is not material that the fact complained of *did not exist at the time of the fire*.

2 Comst. N. Y. R. 210.

6 Cowen R. 676.

3d Kent's Com. p. 373.

1st Wash. Cir. Ct. R. 419.

"Conditions A," Policy No. 1, 11, 12.

7 Wend. R. 270.

6 Wend. R. 494.

Angel on Ins. p. 184-5.

3d Selden's R. 530.

2d Hall's N. Y. R. 589.

3d Comst. N. Y. R. 124.

7th. If Stewart & Scroggs had no interest in the notes and mortgage at the time of the issuing of the *renewal receipt*, the policy is void.

Angel on Ins. p. 101-2, 258.

2d Comst. N. Y. R. 210.

3d Kent. 371.

3d Denio R. 301.

8th. The insurance of the property as a *boarding house*, and the renewal to *Stewart & Scroggs*, *without any change*, was a *warranty* that the property should not be used as a *stable and saloon*, for which the contract of insurance was a higher rate, and which, by the conditions of insurance, was demominated "*hazardous*" and named in the "*memorandum of special hazards*."

3d Harrison's R. p. 480.

6 Wend. R. 623.

2d Denio N. Y. R. 75.

1st Green N. J. R. 110.

3d Hill's R. 501.

2 Wood & Minot's R. p. 472.

9th. The Court erred in permitting *Joseph C. Scroggs* to testify as a witness. *He was interested in the result of this suit.*

1st Starkie Ev. p. 107, note "M," p. 108, 109, and note "A."
1st Greenleaf Ev. sect. 390, p. 498, sect. 395.
1 Gilm. R. 388.

10th. The Court erred in giving the instruction for the plaintiffs below. "*Memorandum of special hazards,*" "*stables,*" "*omnibus stables,*" and *livery stables.*

11th. The Court erred in refusing to let defendants withdraw their pleas.

11 Ill. R. 19.

12th. The Court erred in refusing *non-suit and motion for a new trial, in arrest of judgment.*

13th. The Court permitted the plaintiffs below to introduce in evidence *an assignment by Stewart & Scroggs to the New England Fire Marine Insurance Company; while that was not the company, and was no assignment to the company insuring.*

14th. The assignment of *Stewart & Scroggs*, of January 10th, 1862, was on a *boarding house and saloon insured by company, as stated in the assignment, and defendants below never insured as such, and were not bound to accept such an assignment to another company.*

15th. The policy and conditions attached required that an *unconditional assignment* of the interest of the assured should be assigned to the insurance company before the plaintiffs below could recover on the policy; and no such assignment was made,

but was refused. *Conditions of Policy No. 14, and Farmers Evidence, page No. 11.*

16th. In order to maintain this action the plaintiffs below must have tendered to the company *an assignment unconditional, except as to amount of interest, in its corporate name, before the commencement of this suit. Conditions of Policy No. 14, page 9, Abstract.*

A. TYLER,
Attorney for Appellant.

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N. E. Fr. M. Ins. Co.
no

Geo. H. Wetmore & Co.

~~Abstract~~
Receipts & Payments
of Peff.

Filed May 4, 1863
Scl and
Ch.

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A complete Record of the Proceedings of the Circuit Court of Knox County Illinois (Hon. C. P. Lawrence Judge Presiding) in a cause wherein George H. Wetmore, Mary A. Wetmore and Charles Long, who sue for the use of John M. Farland, are Plaintiffs and "The New England ^{Fire and} Marine Insurance Company" is Defendant.

January 30th A.D. 1867. This day the clerk of the Circuit Court of Knox County State of Illinois issued a summons of which the following is a copy:—

"State of Illinois }
Knox County } ss.

The People of the State of Illinois; To the Sheriff of Knox County Greeting:— We command you to summon "New England's Fire ^{Marine} & Insurance Company" if it may be found in your County, to appear before the Circuit Court of said County of Knox, on the first day of the next term thereof to be holden at the Court House in Knoxville on the third Monday in the month of February next to answer unto Charles Long, George H. Wetmore, Mary A. Wetmore, use

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of John McFarland, in a plea of ~~Trans~~
 Gaes on the Case on Promises, to
 the damage of said Plaintiffs \$1000.—
 as they say, — and make return
 of this writ, with an Endorsement of
 the time and manner of serving the
 same, on or before the first day of the
 term of said Court, to be held as
 aforesaid.

Witness John H. Jarvis, clerk
 of our said Court, and the seal there-
 of, at Knoxville this 30th day of
 January And Mr. John H. Jarvis's  Clerk

~~Filed~~ February 4th And Mr. This day
 came the Plaintiffs by their Attorneys
 Langphere & Douglass and put upon the
 files of this Court their Declaration
 in this cause which is as follows, to wit:—

"State of Illinois"
 "Spox County" In the Spox Circuit Court
 Of the February Term 1862
 "George B. Wetmore, Mary A. Wetmore
 "Charles Long, who sue for the use of John

W. Marland, Plaintiffs in this suit, by
 Lauphere & Longlacs, complain of "The
 New England Fire and Marine Insurance
 Company, Insurers of Houses, goods
 &c from all loss by fire, Defendants
 in this suit, who were summoned in a
 plea of Trespass on the case on Promises
 — and thereupon the said Plaintiffs com-
 plain for that, whereas heretofore, to wit,
 on the 19th day of March 1859, one M.
 A. Wetmore and one Charles Long were
 the owners of two certain notes given by one
 William H. Marvel, and signed by him
 to one John Riggan; — one for the sum
 of \$1000. — and the other for \$345, —
 with interest, both dated November
 6th 1856; — And whereas the said
 Marvel to secure the payment of said notes
 with others had prior to that time,
 executed, acknowledged and delivered to
 said Riggan a deed of Mortgage on lot
 3 in Block 52 on the west side of Alport
 Street in Galesburg Illinois, — which said
 mortgage also belonged to the said M.
 A. Wetmore & Long, And the Plaintiffs
 aver that then & ever since George H.
 Wetmore was the husband of M. A.
 Wetmore. —

And for that, whereas, heretofore, to wit:
 on the 19th day of March AD 1859 at Gales-
 burg, & wit at the County of Knox aforesaid
 the said Defendants by their Policy of In-
 surance of that date and numbered 2

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under the hands of the President and Secretary thereof for the consideration of Five Dollars then and there paid them by the said M. A. Wetmore and Charles Long, did then and there thereby insure against loss or damage by fire to the amount of Five Hundred dollars the said mortgage interest of the said Wetmore and Long "on a boarding house on the west side of Depot st. in said Gallesburg on lot 3 and block 52" and being the same premises above described; and the said Defendants did then & there for the consideration aforesaid thereby promise and agree to make good unto the said assured their executors, administrators and assigns all such loss or damage, not exceeding in amount the said sum assured as should happen by fire to the property as above and therein specified from the seventeenth day of March One thousand, Eight Hundred and fifty nine at 12 o'clock at noon unto the seventeenth day of March One thousand, Eight Hundred and sixty at 12 o'clock at noon, the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same should happen and be paid sixty days after due notice and proof thereof made by the insured and received at the office of the said Defendants in conformity to the conditions annexed

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said Policy and it was therein provided and
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 invasion, in-
surrection, riot or Civil Commotion or
of any military or usurped power or
any loss by theft at or after a fire,
and it was further therein provided
that in case the insured or any other person
or parties with the knowledge of the insured
should have existing during the continuance
of said Policy, any other insurance against
^{loss by} fire on the property thereby insured and
not consented to by the said defendants
in writing and mentioned in and endors-
ed on said Policy, or if the said assured
should make any attempt to defraud
the said defendant, - then the said in-
surance should be void and of no
effect, - and in case of any other
insurance upon the property thereby
insured whether prior or subsequent
to the date of the said Policy, the said
insured should not in case of loss or
damage be entitled to demand or recov-
er on the said policy any greater por-
tion of the loss or damage sustained
than the amount thereby insured should
bear to the whole amount insured on
the said property, And it was thereby
declared to be the true intent and mean-
ing of the parties thereto, that in case

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the above mentioned premises should at any time after the making of and during the time the said Policy would otherwise continue in force, 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 therein any of the articles, goods or merchandize in the said terms and conditions denominated, hazardous, extra-hazardous, or included in the memorandum of special hazards, except therein specially provided for, or thereafter agreed to by the said Respondents in writing to be added to or endorsed on said Policy, then and from thenceforth so long as the same should be appropriated, applied or used for that purpose, the provisions therein should cease and be of no force or effect.

And it was further therein agreed & declared that the said insurance was not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands nor to bonds, bills, notes or other evidences of debt - nor to money or bullion: -

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And that the said Policy was made
 And accepted in reference to the terms
 And Conditions thereto annexed
 which were to be used And resorted to
 in order to explain the rights & obli-
 gations of the parties thereto, in all
 cases not therein otherwise specifically
 provided for. And it was further a-
 greed in said Policy that said in-
 surance (the risk not being changed
) might be continued for such
 further time as should be agreed
 upon, provided the premium there-
 for was paid; and endorsed on the
 Policy or a receipt given for the same

And it was further provided in
 said Policy that the interest of the
 insured in the said Policy was
 not assignable unless by consent
 of the said defendants manifested
 in writing; and that in case
 of any transfer or termination of the
 interest of the insured either by
 sale or otherwise without such con-
 sent, the said Policy should from
 thenceforth be void and of no ef-
 fect. And it was therein further
 provided that the said Policy
 should not be valid until
 countersigned by the Authorized
 agent of the said defendants at
 Galzburg, Illinois; And the
 Plaintiffs aver that at the time

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of the execution and delivery of the said Policy to the said Wetmore & Long, one John P. Horman was the agent of said Defendants at said Gallesburg. And that at the time the said Horman by the name and style and description of "J. P. Horman" countersigned said Policy.

And the Plaintiffs in fact say that the Terms and Conditions attached to said Policy and to which reference was to be had in construing the same were and are substantially as follows:

— 1st Condition, That applications for insurance were to be made in writing and were to specify the construction and materials of the buildings to be insured or containing the property insured, by whom occupied whether as a private dwelling house or otherwise, its situation with respect to ~~other~~ contiguous buildings and their construction & materials. And whether any manufacturing was carried on within or about it; — and in relation to the insurance of Goods and Merchandise, whether or not they were of the description denominated Hazardous, extra hazardous or included in the memorandum of Special Hazards; And that if any person insuring any building goods or other property in the office of said defendants should make any

9 Misrepresentation or Concealment, or omit to make known any fact or feature in the risk which would increase the hazard of the same; or overvalue the same; or if after insurance is effected either by the original Policy or by the Renewal thereof, such Building or premises should be occupied in any way so as to render the risk more hazardous than at the time of insurance or if the risk should be increased by any means whatever within the control of the insured such insurance should be void and of no effect; and that if during the insurance the risk should be increased by the erection of buildings or by the use or occupations of neighboring premises or otherwise, or if for any other cause the said defendants should elect, it should be optional with them to terminate the said insured insurance after notice given to the insured or his representative of their intention to do so, in which case the said defendants were to refund a rateable proportion of the said premium.

2nd Condition. That no insurance whether original or continued should be ~~continued~~ ~~used as~~ considered as binding until the actual payment of the premium.

3rd Condition. That property held in Trust or Commission should be insured as such, otherwise the Policy was not to cover such property; and in case

of ~~loss~~ the names of the respective owners should be set forth in the Preliminary Proof of such loss together with their respective interest therein; that goods or storage should be separately & specifically insured. That if the interest in property insured should be a leasehold interest, not absolute, it should be so reported to the said defendants and expressed in the Policy in writing, otherwise ~~to be~~ the insurance to be void.

— 4th Condition. That Policies of insurance subscribed by said defendants were not to be assignable without the consent of said defendant expressed by indorsement made on said Policy;— And that in case of assignment without such consent whether of the whole Policy or of any interest in it, the liability of said Defendants in virtue of said Policy should thenceforth cease; And the said defendants reserved to themselves the right to elect either to the transfer or to return a rateable proportion of the premium and cancel the policy; And in case of claim for loss or damage on a policy assigned where there was no actual sale or transfer of the property insured, proof of loss should be made by the assured in conformity with the condition of said policy in like manner as if no

Assignment had been made :- otherwise the said Policy should be void and of no Force and Effect whatever and all liability on the part of said defendants should cease.

5th Condition. That notice of all previous insurance upon property insured by said defendants should be given to them and endorsed on the said Policy or otherwise acknowledged by the said defendants in writing at or before the time of their making insurance thereon; otherwise the Policy subscribed by the said defendants should be of no effect. And in case of subsequent insurance on the property insured by the said defendants, notice thereof should be given with all reasonable diligence to the said defendants to the End that such subsequent insurance might be endorsed on the Policy subscribed by the said defendants or otherwise acknowledged by the said defendants in writing And in default whereof such Policy should thenceforth cease and be of no effect. And in all cases of insurance the said defendants should be liable only for such rateable proportion of the loss or damage happening to the subject insured as the amount insured by the said defendants should cease bear to the whole amount insured.

thereon without reference to the date of the different Policies.

6th Condition. That in case of fire or loss or damage thereby or Exposure to loss or damage thereby, it should be the duty of the insured to use their best Endeavours for saving & preserving the property; And if they should fail so to do, the said defendants should not be held answerable to make good the loss and damage sustained in consequence of such neglect; And it was thereby declared that it was mutually understood that there could be no Abandonment to the insurers of the subject insured; And that the said defendants would not be liable for loss or damage caused by lightning, except that which resulted from fire that might ensue therefrom; nor from any loss either by fire or otherwise occasioned by the explosion of a steam-boiler or occasioned by camphene or by the explosion of gun powder or any other explosive substance.

7th Condition. That books of account, written securities or evidence of debt, title deeds - writings and money or bullion were not thereby deemed objects of Insurance.

8th Condition. That Jewels, jewelry

precious stones, watches, plate, medals
musical instruments (piano-fortes
in dwelling houses excepted) printed
music, scientific instruments, paintings,
prints, Engravings, statuary, sculptures
curiosities, casts and models were
not be considered as included in
any insurance unless particularly
specified in the Policy.

The Condition. That persons sus-
taining loss or damage (by fire) were
forthwith to give notice thereof in writing
to the said defendants or their agents
And as soon thereafter as possible
they should deliver as particular
an account of their loss and dam-
age as the nature of the case
would admit signed with their
own hands and that they should ac-
company the same with their oaths of
affirmation declaring the said account
to be just and true, showing also
whether any & what other insurance
had been made on the same prop-
erty, giving a copy of the written
portion of the Policy of each com-
pany; what was the whole cash
value of the subject insured; what
was their interest therein; in what
general manner (as to trade, manu-
facturing, merchandize or otherwise)
the building insured or containing
the subject insured and the several

parts thereof were occupied at the
 time of the loss, and who were the
 occupants of such building, & when
 & how the fire originated so far as
 they know or believe; And that
 they ~~also~~ should ^{also} produce a certifi-
 cate under the hand & seal of a Mag-
 istrate, Notary Public, or Commission-
 er of deeds (most contiguous to the
 place of the fire and not concern-
 ed in the loss as a creditor or
 otherwise or related to the insured
 or sufferers) stating that he had
 examined the circumstances attending
 the fire, loss or damage alleged
 & that he is acquainted with the
 character and circumstances of
 the insured or claimants 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 in-
 sured to the amount therein mentioned,
 which such magistrate, Notary Public
 or Commissioner of deeds should
 certify to — And that when mer-
 chandise or other personal property
 should be partially damaged, the in-
 sured should forthwith cause it to be
 put in as good order as the nature
 of the case would admit, assorting
 and averaging the various articles

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According to their kind separating the damaged from the undamaged goods And should cause a list or inventory of the whole to be made, naming the quantity and cost of each kind, and that the amount of damage should then be ascertained by the examination and appraisal of each article by disinterested appraisers mutually agreed upon, one half of the Appraisers fee to be paid by the insurers;—and should if required submit to an examination under oath by the agent or attorney of the said Defendants and should answer all questions touching his her or their knowledge of anything relating to such loss or damage or to their claim thereupon And should subscribe such examination, the same being reduced to writing; And that whenever required the insured or person claiming should produce and exhibit his books of account and other vouchers to the insurers or their agent at the office of said Defendants in support of his claim And should permit extracts and copies thereof to be made; and should also exhibit to any person named by said Defendants and should permit to be examined by them any property damaged on which any loss is claimed or any property saved which was insured by the

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Said Policy; And that until such declarations, certificates and proofs full and satisfactory to the said defendants are produced and such appraisers and examinations of property and exhibit of books are permitted by the claimant, the loss should not be ~~possible~~ payable; And that re-insurance for any other insurance company to be on the basis of joint liability with said defendants; And in the event of loss the said defendants were to pay their pro rata proportion of said loss; And that all fraud or false swearing should cause a forfeiture of all claims on the said defendants and should be a full bar to all remedies against the insurers on said policy.

10th Condition. That in case of any loss or damage to the property insured, it should be optional with the said Defendants to replace the articles lost or damaged with others of the same kind and quality and to rebuild or repair the building or buildings within a reasonable time or to take the property at the appraised value giving notice of their intention to do so within sixty days after having received the preliminary proof of loss required by ninth article of the said conditions.

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And that in case difference should arise concerning the amount of any loss or damage by fire, the matter should at the written request of either party be submitted to the judgment of disinterested arbitrators mutually chosen, whose award in writing as to the amount of such loss and damage should be off binding on the said parties; And that payment of losses should be made in sixty days after the loss should have been ascertained, and full and satisfactory proof should be received by the said defendants.

10th Condition. That insurance made might be continued for such further time as might be agreed on, the premium required therefor being paid and endorsed on the policy, or a receipt given for the same; and that all insurance original or renewed should be considered as made under the original representation in so far as it might not be varied by a new representation in writing which in all cases it should be incumbent on the party insured to make where the risk had been changed either within itself or by the surrounding or adjacent buildings; And that if at 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 or occupation of the premises insured or of the neighboring premises, the assured shall fail to give information thereof, said Policy and Renewal should be void and of no effect.

12th Condition. That when any Policy is made and issued upon a survey and description of certain property such survey and description should be taken and deemed a part and portion of said Policy and Warranty on the part of the insured.

13th Condition. That where property insured by the said Defendants should be damaged by removal from a building in which it is exposed to loss by fire said damage should be borne by the insured and the said Defendants in such proportion as the whole sum assured bears to the whole value of the property insured, of which proof should in due form be made by the claimant.

14th Condition. That the said Defendants would not be answerable for any loss arising from the use of open lights in barns or where shavings are made; or of fires in buildings unprovided with good and substantial stone or brick chimneys or in consequence of neglect or deviation from the laws and or regulations of police made to

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prevent accidents from fire in places
where laws and regulations on this
subject exist. And that in case
of loss the assured should assign to
the said defendants all their right
to recover satisfaction therefor, from
any other person or persons, town or
corporation with a power of attorney to
sue for and recover the same at
the expense of said defendants. And
that if assured as a mortgagee, then
they should assign to the said defend-
ants the mortgage upon the premises
insured together with the debt secured
thereby or so much thereof as would
be sufficient to pay said loss.
And that a refusal to execute such
assignments should operate to dis-
charge the said defendants from
all liability under the said contract.
- 15th Condition. That it was
furthermore thereby expressly agreed
provided that no suit or action of any
kind against said defendants for
the recovery of any claim upon, under
or by virtue of the said Policy, should
be sustainable in any court of law or
Chancery unless suit or action should
be commenced within the term of
twelve months next after any loss
or damage should occur; and that
in any case any such suit or ac-
tion should be commenced against

said defendants after the expiration of twelve months next after such loss or damage should have occurred, the lapse of time should be taken and deemed as conclusive Evidence against the validity of the claim thereby so attempted to be enforced, And the Plaintiffs Aver that on the 31st day of March A.D. 1889 the said M.A. Wetmore and G.W. Wetmore, the husband of M.A. Wetmore, assigned for value received under their hands by endorsement in writing on the back of said Policy all of their right, title & interest in & to the said Policy to the said Charles Long & delivered said Policy to him And on the same day the said defendants by their agent J.P. Dorman, consented to said assignment in writing by a like endorsement on said Policy. And the said Plaintiffs further Aver that the said Long on the ^{to-wit:-} 26th day of January A.D. 1890 for value received assigned under his hand in writing on the back of the said Policy all his right, title & interest in & to the said Policy to John C. Stewart and Joseph C. Scroggs and delivered said Policy to them And on the same day the said Defendants by J.P. Dorman, their agent consented to

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said Assignment by a like Endorsement
in writing on the back of said Policy.
And the said Plaintiff further
Aver that on or about 23rd day of
March 1889 the said M. A. Wetmore
& G. W. Wetmore; ~~then husband~~, sold
and assigned to the said Long
for value received all of their interest
in said notes and Mortgage and
delivered them to him and on the
26th day of January 1890 the said
Charles Long for a valuable con-
sideration sold and assigned the
said notes and mortgages to the
John C. Stewart & Joseph C. Scroggs
and delivered them to the said
Stewart & Scroggs. And the
Plaintiff further Aver that on the
19th day of March 1890, said
John C. Stewart and Joseph C.
Scroggs paid to the said J. B.
Norman for the use of said defend-
ants, and who then was and still
is the agent of the said Defendants
at Galesburg Illinois, the sum of
seven 700/100 dollars (being the pre-
mium on six hundred dollars for one
year, and thereupon then & there the
said Norman as such agent deliv-
ered to said Plaintiff a receipt
called a Renewal Receipt numbered
5, dated at Galesburg Agency
Signed by W. M. Waterman

President And Geo. H. Jewett, Sec-
 tary of the said Insurance Company
 Defendants as aforesaid, And com-
 mitted by the said Corman as
 such agent on the 19th day of March
 And 1860, to wit: at the county of Snow
 aforesaid, in And by which said
 Renewal Receipt it was declared
 that the said Defendants had
 received of the said John C. Steu-
 art & Joseph C. Scroggs by the
 name and style of Stewart & Scroggs the
 sum of seven & 50/100 dollars being the
 premium on six hundred dollars insured
 under policy no. 2. (Being the policy
 first above mentioned) which Policy
 was thereby continued in force for the
 benefit of Stewart & Scroggs for the period
 of one year, to wit from the 19th day of
 March 1860 to the 19th day of March
 1861 at noon; And the Plaintiff aver
 that the said defendants thereby insured
 the sum of six hundred dollars of the
 said mortgaged interest of the said John
 C. Stewart & Joseph C. Scroggs in the
 said boarding house above mentioned for the
 period of one year from the said 19th
 day of March 1860, & that said Policy
 was so extended by such assignment
 payment and renewal receipt upon said
 building as a boarding house & saloon.
 And the Plaintiff aver that afterwards

to-wit; - in the night between the 9th & tenth days of March 1861 and about the hour of midnight, the said Boarding House mentioned in said Policy No. 2. And being the same property on which the said mortgage was given to secure said \$1345. notes was accidentally and without any fault of the said Plaintiffs or the said Stewart & Scroggs burned up and entirely consumed by fire and was thereby wholly lost to the said Plaintiffs and they aver that at the time the said building was so destroyed they were neither of them present and had no knowledge of it until the next morning & have no knowledge of how it occurred and that at the time it was so destroyed it was of the cash value of to-wit; \$1422. And that at that time there was due thereon from the said Stewart & Scroggs on said note and mortgage the sum of, to-wit. \$1450.

And that they were the entire owners of said two notes and mortgage and the mortgage interest so insured by the said defendants in & by said Policy No. 2. and Renewal Receipt No 5

And the Plaintiffs further aver that on the night when the said boarding house was burnt, to-wit; between the 9th & tenth days of March 1861 the said Norman then being the agent of the said defendants as aforesaid

was present at and witnessed the burning of said Boarding House and that afterwards on to wit on the 18th day of March 1861 the said Stewart & Scroggs gave to him as such agent a written notice of said fire and on to wit: the 29th day of March 1861 & as soon ~~as~~ after said fire as possible, they delivered to the said Cornman as such agent a particular account of their loss and damage & the value of the property insured & by whom owned signed with their own hands & duly sworn to by them before J. B. Boggs Esq., a Notary Public in & for the city of Galveston & County of Harris aforesaid, and they also at the same time delivered to the said agent of the said defendant a certificate of the said J. B. Boggs, who lived most contiguous to the place of said fire who was in no way concerned in said loss as a creditor or otherwise and who was not related at the time of making said certificate to either of said Plaintiff, in and by which certificate the said Boggs stated that he was acquainted with the character & circumstances of the said Stewart & Scroggs, that he had made diligent enquiry into the facts set forth in the aforesaid particular statement so delivered to said agent

And believed & knew that the said Plaintiff had really and by misfortune and without fraud or evil practice sustained loss and damage by the said fire to the amount of six hundred dollars and that he lived most contiguous to the place of said fire;— which said certificate was under the hand and seal of the said Jozys. And they further aver that the said notices, statement, declaration, certificate and proof were satisfactory to the said defendants. And they further aver that defendants waived any & all objection to imperfections & deficiencies in the said notices of loss & account filed with them by the said Stewart & Jozys and in the said certificate of the said Notary Public.

They further aver that said fire was not caused by the explosion of any steam boiler nor occasioned by camphine or by the explosion of gunpowder nor by any other explosive substance and that said loss did not arise from the use of open lights in barns or where shavings were made, nor from having unsubstantial stone or brick chimneys, nor from a neglect or deviation from the laws or regulations of police, nor did it happen or take place by means or in consequence of invasion, insurrection, riot or civil commotion or of any military or usurped power. And they further aver that at the time the said boarding house was

burned, it was vacant and unoccupied
 And that they have never at any time ob-
 tained, procured or caused to be obtained
 or procured any insurance ~~to~~ upon the
 property above described or upon their
 mortgage interest therein other than the one
 above set forth And as far as they know
 or believe no other person has at any
 time caused the said boarding house or
 mortgage interest therein to be insured - or
 procured the same to be done in any
 company or in any manner whatever &
 that at the time of said fire, the said building
 was not appropriated, applied or used
 to or for the purpose of carrying on or of
 exercising therein any trade, business or
 vocation denominated hazardous or extra haz-
 ardous or specified in the memorandum
 of special hazards in the terms & conditions
 annexed to said Policy or for the purpose of
 storing therein any of the articles, goods or
 merchandise in the same terms and conditions
 denominated hazardous, extra hazardous
 or included in the memorandum of special haz-
 ards & that said fire was not occasioned
 by lightning, And the Plaintiffs aver that
 at the request of the Defendant & with the
 assent & concurrence of the said John
 C. Stewart & Joseph C. Scroggs & M.
 H. Billings & A. N. Carpenter were
 chosen as arbitrators to determine the
 extent of the loss by fire as aforesaid
 & the said persons so chosen to arbit

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rate, award & determine the amount of said loss did afterwards & before the commencement of this suit, to wit: at said county award & determine & fix the amount of said loss at the sum of one thousand dollars & that the amount of said insurance has not been paid although more than sixty days elapsed after making of said award & before the commencement of this suit.

Plaintiff aver that the said defendants have not rebuilt the said boarding house nor given notice to the said Plaintiff or said Stewart & Scroggs, of their intention to do so although more than sixty days ~~days~~ have elapsed since the preliminary proof of said loss was furnished them.

And they further aver that afterwards to wit: - on the 15th day of July 1861, the said John C. Stewart and Joseph C. Scroggs executed under their hands & seals and offered to deliver to the said agent of the said defendants an assignment of six hundred dollars of the note & mortgage aforesaid And of the decree of the Circuit Court of said county of Iowa rendered on said note & mortgage with full power and authority to the said defendants to collect the same - which was refused by said Agent, And afterwards, to wit, - on the 16th

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day of January And before the
commencement of this suit, the said John
C. Stewart & Joseph C. Scroggs executed
under their hands & seals & delivered
to the John P. Norman a full and
absolute assignment of the said notes
And mortgage & the decree of foreclosure
thereon, the same having been foreclosed
in this Court, together with all right
they ~~may~~^{might} have to collect from any in-
corporation or individual, any sum of
money for or on account of the boarding
house & Saloon, with full power to
take any & all steps necessary to
collect the same & receipt for the same with-
out expense to said Stewart & Scroggs

Of all which said premises
the said Defendants afterwards, to wit:-
on the 15th day of July 1861, had
notice And was then requested
by the Plaintiff to pay them the said
sum of six hundred dollars so by
them assured as aforesaid.;

And whereas the said Defendants
on the 15th day of July 1861 were in-
debted to the Plaintiff in the sum
of \$1000. for money before then re-
ceived by the said defendants for the
use of the Plaintiff, and in the sum
of \$1000. for money found to be due
from the defendants to the Plaintiff on
an account then stated between
them, And the said defendants

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afterwards on the day and year last
aforesaid, in consideration of the prem-
ises respectively then & there promised
the Plaintiff ^{to pay the several moneys respectively to the Plaintiffs} "on request,"

Yet they have disregarded
their promises and have not paid
any of the said money in this decla-
ration mentioned or any part thereof
to the Plaintiff damage of \$1000.
And therefore they ^{bring suit} ~~bring suit~~ &c.
Langford & Douglas
Attys for Plffs }

— And upon the back of said dec-
laration there appears the following:
— "Filed Feb. 4th / 62.
" J. H. Lewis (Clk.)

On the same day said Plaintiffs
placed upon the files of this Court
a copy of the instrument sued on,
— of which the following is a copy:—

"Copy of Instrument sued on.
New England Fire & Marine Insurance
Co. Hartford Conn. No. 2. \$9.00.
— By this Policy of Insurance the New
England Fire and Marine Insurance Co.
Company, In consideration of Nine dollars

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to them in hand paid by the assured
 hereinafter named, the receipt whereof is hereby
 acknowledged, do Insure M. A. Wetmore
 and Charles Long of Galesburg, Iowa
 Co. Ill., against loss or damage by fire
 to the amount of \$900. for the period of
 One year their mortgage interest on a
 Boarding House on the West side of
 Depot Street in said Galesburg on lot
 3 and Block 52, And the said Company
 for the consideration aforesaid do hereby
 promise and agree to make good unto the
 said assured, their executors, admin-
 istrators and assigns all such loss
 or damage not exceeding in amount
 the sum insured as shall happen
 by fire to the property as above spec-
 ified from the seventeenth day of March
 One thousand, Eight hundred and
 fifty nine (at 12 o'clock - noon.) unto
 the seventeenth day of March One thou-
 sand, Eight hundred and sixty (at 12
 o'clock, noon) the said loss or damage to
 be estimated according to the true and ac-
 tual cash value of the said property at
 the time the same shall happen, and to
 be paid within sixty days after due notice
 and proof thereof made by the insured
 and received at this office in con-
 formity to the conditions annexed to this
 Policy, Provided Always And it is
 hereby declared that this Company
 shall not be liable to make good any loss

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or damage by fire which may happen or take place by means of invasion, insurrection, riot or civil commotion or any military or usurped power or any loss by theft at or after a fire.

And Provided further that in case the assured or any other persons or parties with the knowledge of the assured shall have existing during the continuance of this Policy, any other insurance against loss by fire on the property thereby insured and not consented to by this Company in writing and mentioned in or endorsed upon this Policy or if the assured shall make any attempt to defraud the company, then this insurance shall be void and of no effect. And in case of any other insurance upon the property thereby insured whether prior or subsequent to the date of this Policy, the insured shall in case of loss or damage be entitled to demand or recover on this Policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above mentioned premises shall at any time after the making of and during the time this Policy would otherwise continue in force, 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 this Policy or for the purpose of storing therein any of the articles goods or merchandize in the same terms and conditions denominated Hazardous Extra Hazardous or included in the memorandum of special hazards except herein specially provided for or hereafter agreed to by this company in writing to be added to or endorsed upon this Policy, then and from thenceforth so long as the same shall be so appropriated applied or used, these presents shall cease and be of no force or effect.

And it is Moreover agreed and declared that this Insurance is not intended to apply or to cover any books of account written securities, deeds or other evidences of ~~debt~~ title to land, nor to bonds bills, notes or other evidences of debt nor to money or Bullion.

And that this Policy is made and accepted in reference to the terms and conditions hereto annexed which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.

This Insurance (the risk not being

changed) may be continued for such further term as shall be agreed on provided the premium therefor is paid and Endorsed on the Policy or a receipt given for the same

— The interest of the insured in this Policy is not assignable unless by consent of this Company manifested in writing; And in case of any transfer or termination of the interest of the insured either by sale or otherwise without such consent, this Policy shall from thenceforth be void and of no effect.

This Policy shall not be valid until countersigned by the Authorized agent of said New England Fire Insurance Company at Galesburg Ill.

In witness whereof the New England Fire and Marine Insurance Company have caused these presents to be signed by their President and attested by their Secretary in the City of Hartford

N. M. Waterman President
Geo D Jewett Secretary
Countersigned at Galesburg this 19th day of March 1839

J. P. Dorman Agent

The New England Fire and Marine Insurance Company hereby consent that the interest of M. A. Tetuors in the

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within Policy subject to all the terms
and conditions therein mentioned and
referred to, be assigned to Charles
Long

Galesburg March 31st 1839 J. P. Dorman *Agent*

For value received, I hereby assign
transfer and set over unto Charles Long
and his assigns all my title and
interest in this Policy and all ad-
vantage to be derived therefrom

Witness my hand and seal this
31st day of March 1839

Sealed and delivered in presence of } W. A. Wetmore
G. H. Wetmore
" "

The New England Fire and Marine
Insurance Company hereby consent
that the interest of Charles Long
in the within Policy subject to all the
terms and conditions therein mentioned
and referred to, be assigned to
Stewart & Scroggs
Galesburg January 26th 1840 J. P. Dorman *Agent*

For value received I hereby transfer
assign and set over unto Stewart & Scroggs
and his assigns all my title and
interest in this Policy and all ad-
vantage to be derived therefrom. Witness
my hand and seal this 26th day of January
1840 Charles Long

Conditions of Insurance

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II. Application for Insurance on property must be in writing and 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 merchandize whether or not they are of the description denominated hazardous, extra hazardous or included in the memorandum of special hazards. If any person insuring any building goods or other property in this office shall make any misrepresentation or concealment or omit to make known any fact or feature in the risk which increases the hazard of the same; - or over value the same, or if after insurance is effected either by the original Policy or by the renewal thereof, such building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, or

The risk be increased by any means whatever within the control of the insured. 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 insured or his representative, of their intention to do so; in which case the company will refund a rateable proportion of the premium.

II. — No Insurance whether original or continued shall be considered as binding until the actual payment of the premium.

III. — 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 proof of such loss together with their respective interests therein. Goods on storage must be separately and specifically insured. If the property to be insured be a lease hold 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.

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Note. 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.

—IV. Policies of Insurance subscribed by this Company shall not be assignable without the consent of the Company expressed by endorsement made thereon.

In case of assignment without such consent whether of the whole Policy or any interest in it, the liability of the Company in virtue of such Policy shall thenceforth cease, and the Company reserves to itself the right to elect either to consent to the transfer or return a rateable proportion of the premium and cancel the Policy. In case of claim for loss or damages on a Policy assigned when there is no actual sale or transfer of the property insured, proof of loss shall be made by the assured in conformity with the conditions of 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.

V. Notice of all previous insurance upon property insured by this company shall be given to them and endorsed on this Policy or otherwise acknowledged by the company in writing at or before the time of their making insurance thereon; otherwise the Policy subscribed by this company shall be of no effect. And in case of subsequent insurance on property insured by this company, notice thereof must also with all reasonable diligence, be given to them; - to the end that such subsequent insurance may be endorsed on the Policy subscribed by this company or otherwise acknowledged in writing; in default whereof such Policy shall thereupon cease and be of no effect. And in all cases of insurance this company shall be liable only for such rateable proportion of the loss or damage happening to the ^{subject} insured as the amount insured by this company shall bear to the whole amount insured thereon without reference to the dates of the different Policies.

VI. 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 endeavours for saving and preserving the property. And if they shall fail so to do, this company shall not be held answerable

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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, This company will not be liable for loss or damage occasioned by lightning except that which results from fire that may ensue therefrom; nor for any loss or damage either by fire or otherwise occasioned by the explosion of a steam-boiler - or occasioned by camphene or occasioned by gunpowder or any other explosive substance

—VII. Books of account, written securities of or evidences of debt, title deeds, writings and money or bullion are not deemed objects of insurance.

—VIII. — Jewels, jewelry, precious stones, watches, plate, medals, musical instruments (Piano Fortes in dwelling houses excepted) printed music, scientific instruments, paintings, prints, engravings, statuary, sculpture, curiosities, casts and models are not included in any insurance unless particularly specified in the policy.

—IX. Persons sustaining loss or damage by fire are forthwith to give notice thereof in writing to the company or its agent and as soon after

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as possible they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their hands. And they shall accompany the same with their oaths of affirmation declaring 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 of each company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner (as trade, manufacture, merchandize or otherwise) the building insured, or containing the subject insured, and the several parts thereof were occupied at the time of loss and who were the occupants of each building; and when and how the fire ~~insured~~ 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 Commissioner of deeds (most contiguous 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 ~~attended~~ examined the circumstances attending the fire, loss or damage alleged and that he is

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acquainted with the character and circumstances of the insured or claimant 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 therein mentioned, 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 according to their kinds, separating the damaged from the undamaged goods, 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, one half of the appraisers fee to be paid by the insurers, and 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.

H 2

And subscribe such Examination, the same being reduced to writing; and whenever required, the insured or person claiming shall produce and exhibit his books of account and other vouchers to the insurers or their Agents at the office of this Company, in support of his claim; and permit extracts and copies thereof to be made and shall also exhibit to any persons named by the company and shall permit to be examined by them any property damaged on which any loss is claimed, or any property saved which was insured, by this Policy, and until such declarations, certificates and proof full and satisfactory to the company are produced and such appraisals and examinations of property and exhibit of books are permitted by the claimant the loss shall not be payable.

Re-Insurance for any other insurance company to be on the basis of joint liability with said company and in the event of loss, this company to pay their pro-rata proportion of said loss.

All fraud or false swearing shall cause a forfeiture of all claims on the insurers and shall be a full bar to all remedies against the insurers on this Policy.

—X— In case of any loss on or any 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 quality and to rebuild or to repair the building or buildings within a reasonable time or to take the property at the appraised value, giving notice of their intention so to do within sixty days after having received the preliminary proofs of loss required by the ninth article of these conditions. In case differences shall arise concerning the amount of any loss or damage by fire the matter shall at the written request of either party, be submitted to the judgment of disinterested arbitrators mutually chosen whose award in writing as to the amount of such loss and damage, shall be binding on the parties. Payment of losses shall be made, in sixty days after the loss shall have been ascertained, and full and satisfactory proof by the Company.

XVII. Insurance Once made, may be continued for such further time as may be agreed on, the premium required therefor being paid and endorsed on the Policy or a receipt given for the same and all insurances original or renewed shall be considered as made under the original representation in so far as it may not be varied by a new representation in writing which in all cases it

shall be incumbent on the party insured to make where the risk ~~had~~ has been changed either within itself 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 or occupation of the premises insured or of the neighboring premises, the assured shall fail to give information thereof, said Policy and renewal shall be void and of no effect.

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

XIII — 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 insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

XIV — The company will not be answerable for any loss arising from the use of open lights in barns, or where shavings are made, or of fires in

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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 the subject exist. In case of loss, the assured shall assign to this Company all his right to recover satisfaction.

Therefor from any other person or persons Town or other Corporation with a Power of Attorney to sue for and recover the same at the expense of this Company.

And if insured as a mortgaged he or they shall assign to this company the Mortgage upon the premises insured together with the debt secured thereby or so much thereof as will be sufficient to pay said loss. And a refusal to execute such assignments shall operate to discharge this Company from all liability under this contract.

IV 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 sustainable in any Court of law or Chancery unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall have occurred. And in case any such

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months
" Suit or action shall be commenced against
said Company after the expiration of twelve ~~months~~
months next after such loss or damage shall
have occurred, the lapse of time
shall be taken and deemed as conclus-
sive evidence against the validity of
the claim thereby so attempted to be en-
forced."

" "

New England Fire and Marine Insurance
Company of Hartford. Renewal Receipt
No. 5, Galesburg Agency.

Recd. of Stewart & Scroggs Seven $\frac{30}{100}$
dollars being the premium on six hun-
dred dollars insured under Policy
No. 2 which is hereby continued in
force for one year, to wit:— From the seven-
teenth day of March 1862 until the
14th day of March 1863, at noon

~~J. M. Waterman~~ Resident
J. P. Norman Agent

Geo. D. Stuart Secretary.

Countersigned at Galesburg this 19th day of March 1862

" "

— And upon the back of the instrument
entitled "copy of instruments sued on", there
appears the following:—

"Filed Feb. 4th / 62. J. B. Lewis *et al*"

" "

— Also upon the said 4th day of Feb-
ruary 1862, the Plaintiffs herein

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by their Attorneys aforesaid, filed in this Court their praecipe for witnesses and thereupon such praecipe was duly ^{obeyed} issued.

February 4th and 1862.

This day the Sheriff placed upon the files of this Court the summons heretofore issued therein as aforesaid, upon the back of which summons there appears the following endorsement:—

"I served the within summons by reading the within same to J. P. Rodman Agent of the said "New England Fire and Marine Insurance Company" & by delivering to him a true copy of the same this 6th day of February 1862

E. C. Broth, Sheriff of }
Knox County Ill. }

By Wm M. Gowan Deputy Sheriff

"Sheriff's Fees:— 1 service — \$0.50 — 6 miles travel \$0.30 — 1 copy \$0.50 — return \$0.10 — \$1.40 E. C. Broth Sheriff Knox Co."

There appears also the following on the back of said summons:

"Filed this 4th day of Feb. and 1862
J. H. Davis Clerk

February 14th An Mon.

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This day met the Circuit Court
of Knox County, Illinois in court in
course of the February Term, pursu-
ant to Adjournment; the record of
which is as follows:—

“ February Term An Mon

“ State of Illinois }
“ Knox County } ss.

Pleas Before the
Hon. Charles D. Lawrence, Judge
of the Tenth Judicial Circuit of
the State of Illinois, at a court be-
gan and held at the Court house
in the City of Knoxville, in said
County, on Monday the 14th day of
February, in the year of our Lord one
Thousand, Eight Hundred and
Sixty-two, being the third Mon-
day of said month.

Present, —

Hon. Charles D. Lawrence Judge
James H. Stewart, States Attorney
John H. Lewis Clerk
E. C. Broth Sheriff.

Court opened by Proclamation. —

February 18th And Mer.

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14/0

Charles Long et al.

v.
New England Fire & Marine Ins. Co.

} Assumpsit

This day
came the Plaintiff, by Attorney,
And on his motion, It is ordered by
the Court that Defendant be ruled
to plead to Plaintiffs' decla-
ration herein by Thursday morning
next.

" "

- And upon this same day Plaintiff
by their Attorney filed herein a
Second praecipe for a subpoena
for additional witnesses herein.
Thereupon said subpoena was duly
issued.

" "

February 20th And Mer.

Charles Long et al.

v.
New England Fire & Marine Ins. Co.

} Assumpsit

This day
came the Defendant by Attorney and
moved the Court to dismiss this
suit for want of a declaration.
And the Court having heard

14/0

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motion, - It is ordered by the Court that the same be over-ruled. - Thereupon the Defendant moved the Court for further time to plead. And the Court having heard the same, it is ordered that the Defendant have time to plead ~~until~~ to Plaintiffs declaration until Monday morning next Defendant consenting not to file demurrers herein.

" "

February 21st and 22nd

140 Charles Long et al }
vs. } Assumpsit
New England Fire & Marine Ins. Co.

This day came the Defendant by Attorney and moved the Court to strike Plaintiffs declaration herein from the files. And the Court having heard the same, It is ordered by the Court that the same be overruled.

" "

February 24th and 25th

- This day came Defendant herein and placed upon the files of this Court, to Plaintiffs' declaration aforesaid herein, his Pleas, as was the order of the Court heretofore herein, as follows: -

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Huron County Circuit Court }
February Term 1888 } —

The New England Fire and Marine }
Insurance Company }
Adm'r }
Charles Long et. al. }

And the
said Defendant by Ford & Ransom,
its attorney, comes and defends the
wrong and injury (when &c.

And says that it did not undertake
and promise in manner and form as the
said Plaintiffs have above thereof com-
plained against it —

And of this the said Defendant
puts itself upon the Country.

2 - And for a further plea in this be-
half as to the first count of the
Plaintiffs' declaration aforesaid, the said
defendant says Actio non; because, he
says, that at the time of the issuing of the
said supposed ^{original} Policy of insurance in the
said count mentioned, the said Wetmore
& Long then and there made a survey
and description in writing of the premises
in the said supposed Policy men-
tioned and described and upon which
survey and description the said supposed
Policy was made and issued. And the
defendant avers that in and by the

Said survey and description the building ^{then} on said premises was described and stated to be a dwelling in which some boarders were kept and which said original representation was not thereafter varied by any new representation in that behalf made. And the said supposed renewals and each and every then of in said count mentioned were made under the said representation and description as aforesaid. And the said defendant avers that after the time of the said supposed renewal of said Policy to the said Plaintiffs on said 19th day of March And also in said count mentioned And on to-wit:- the first day of January And also, to-wit:- at Galzburg aforesaid the said building on the said premises in said supposed Policy mentioned became and was occupied as a saloon and a disorderly house in part, And a portion thereof as a stable; And so continued for a long space of time, to-wit:- for the space of three months. And the Defendant avers that the keeping of such saloon, disorderly house and stable in said building and in said premises, rendered the risk more hazardous than at the time of so issuing the same as aforesaid and the said risk was by such change in the occupation and use of said premises greatly and

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materially increased within the control of the said Plaintiff. Whereupon the said Defendant says that by virtue of the conditions of said Policy in the said Count mentioned, the same and the said supposed renewal thereof became and were wholly void and of no effect.

And this the said Defendant is ready to verify whereupon it prays judgment as to said Count if the said Plaintiff ought to have or maintain their aforesaid action thereof against it.

3^d

And for a further plea in this behalf as to said first Count of the declaration - aforesaid, the said Defendant says Action non; - because ^{the} ~~he~~ says, that after the destruction of said building on the said premises, to wit: on the tenth day of July A.D. 1861, & to wit: - at Galesburg aforesaid, the said Defendants caused a request to be made upon the said Plaintiff to assign the said mortgage upon said premises together with the debt secured thereby or so much thereof as would be sufficient to pay said loss; that afterwards to wit: - on the 23^d day of July A.D. 1861, & to wit: at the place aforesaid, the said Plaintiff refused to execute any assignment of said mortgage or the debt secured thereby except upon the condition that

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the Plaintiffs should not be called upon to pay any of the court costs in obtaining a decree upon the said mortgage. - Whereupon the said defendant avers that the said Plaintiffs have refused to execute any assignment of said mortgage or the debt secured thereby & wherefore the said Defendants are, was, and is discharged from all liability upon the said supposed Policy or renewal as aforesaid. And this the said Defendant is ready to verify, Wherefore he prays judgment &c.

4. And for a further plea in this behalf the said defendant says Actio non; because it says, that at the time of giving of the supposed renewal receipt to said Stewart & Scroggs, they, said Stewart & Scroggs represented themselves as mortgagees on said premises, which deft. avers was not so at the time aforesaid. - And this, said deft, is ready to verify. Wherefore it prays judgment &c.

5- And for a further plea in this behalf the said Defendant says Actio non; because, it says, that at the time of the issuing said supposed ^{Policy} and at the time of issuing said renewal receipt, it was represented to said defendant that said supposed insured building was a dwelling in which some boarders were kept - and that said

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supposed Policy and renewal receipt
and each and every one of them were
issued upon such representations
And said defendant avers that after
the time of said supposed renewal of
said Policy to the said Plaintiff or to the
said Stewart & Scroggs mentioned in
said Plaintiff's declaration, to wit: - on the
first day of January A.D. 1861, to wit
at Galerburg aforesaid, the said build-
ing on the said premises in said sup-
posed Policy mentioned, became and
was occupied as an Eating house
and restaurant which rendered the
risk more hazardous ^{than} that at the time
of the supposed insurance aforesaid
And that the said risk by such change
in the use and occupation of said
premises was greatly and materially
increased within the control of
said Plaintiff or said Stewart & Scroggs

Wherefore the defendant says that by
virtue of the conditions in said Policy
mentioned the same & the said sup-
posed renewal thereof became &
were wholly void and of no effect.

And this defendant is ready to
verify. Wherefore it prays judg-
ment &c.

G.

And for a further plea in this be-
half, defendant says Actio non est
cause, ^{it} says, after the supposed

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renewal of said Policy by the supposed renewal receipts mentioned in said Plaintiff Declaration, to wit:— on the first day of January A.D. 1861, said building was occupied by control of Plffs, ~~on~~ said Stewart & Scroggs and for a long space of time thereafter, to wit: for more than the space of one month for the storing of gun-powder, camphine, burning fluid & salt-petre; And because during said time burning fluid and camphine was used for lights in said building, which rendered the risk more hazardous than at the time of the supposed issuing of said policy and said supposed renewal receipts and that by the conditions of said supposed policy, defendant should have consented in writing to the said use and occupation of said building; And by such occupation & use without such consent by the ~~conditions~~ conditions of said Policy, said Policy and renewal receipts aforesaid, became void and of no effect. And defendant avers that no such consent was ever given, And this defendant is ready to verify— Wherefore it prays judgment &c. Ford & Ransom
Defts. attys.

And upon the same instrument of writing there appears as of the same date