

12325

No. _____

Supreme Court of Illinois

Peoria Marine & Fire Ins.Co.

vs.

Lewis, et al

71641  7

94

Petrona Marine

Insurance Co,

vs

David Lewis et al

1837

94

12325

185

X

Humberts Circuit Court

David Lewis Joshua B

Emmett Henry O Meslor

Clark Strong

vs

Action Covenant

The Peoria Marine & Fire

Damages \$3000

Insurance Company

The Clerk will issue Summons
in the above Cause to the Staff of Humberts Co July 7, 1836

To the Clerk Circuit Court

Humberts Co

Yours &c

Jas M High Peoria City

Chancellor's Circuit Court of the Term of February in the year of
our Lord one thousand eight hundred and fifty six

Chancellor's Court, for David Lewis, Joshua
B. Smyth, Henry C. Weston and Carl Street Plaintiffs and part-
ners in business under the name style firm of Lewis, Smyth
& Co. by Jas. M. Wright their Attorney Complain of the "Proter Ma-
rine & Fire Insurance Company" a body Corporate and politic
Defendants of a Plea of Breach of Covenant: For that where-
1st Count Therefore to wit on the first day of June in the year of our
Lord one thousand eight hundred and fifty five at Proter
in the County of Proter to wit at Rockford in the County of
Champaign aforesaid by a certain due policy of In-
surance then and there made and sealed with the common
seal of the said Defendant as being a body Corporate and
aforesaid and subscribed by the President and Countersigned
by the Secretary of said Defendants (and which said due policy
or policy of Insurance so sealed, subscribed and Countersigned
as aforesaid the said Plaintiffs now being here into Court bear-
ing date to wit the same day and year aforesaid in Consider-
ation of the sum of forty dollars then & there paid by the
said Plaintiffs to the said Defendants, the said Defend-
ants did then and there insure the said Plaintiffs by
the name and description of Lewis, Smyth & Co. on
their said Factory buildings including Machinery and
fixtures (which is then described (said building was
a basement of Stone upon a floor of wood and was sit-
uated on Rock River in the City of Rockford Ills and was
in said policy described as being described in applica-

cation and survey etc 96. on file in the Office of the Def-
ants the application and survey of said building for the
purpose of obtaining such insurance (meaning) against loss
or damage by fire to the amount of two thousand dollars. And
the said Defendants did then and there insure by the
said policy agreed to and with the said Plaintiffs to make good
unto them their executors administrators and assigns all such
immediate loss or damage not exceeding in amount the sum
insured as aforesaid (being the sum of two thousand dollars
above mentioned) as should happen by fire to the property in-
sured ^{said} as above mentioned and in said policy specified
from the first day of June in the year one thousand eight hun-
dred and fifty five (at twelve O'clock at noon) unto the first
day of June one thousand eight hundred and fifty six (at
twelve O'clock at noon) the said loss or damage to be estimated
according to the true and actual cash value of the said prop-
erty insured at the time the same should happen and to be
paid within sixty days after notice and proof thereof made
by the Defendants in conformity to the Conditions annexed to the
said policy. And it was in the said Policy of Insurance pro-
vided and declared that the said Plaintiffs should not be
liable to make good any loss or damages by fire which might hap-
pen or to be taken place by means of any invasion insurrect-
ion riot or Civil Commotion or by any Military or usurped
power or any loss by Theft at or after the fire: And it was also
inserted and therein further provided that in case the said
Defendants should have had already (meaning at that time
meaning) any other insurance against loss by fire on the

property thereby insured and not notified to the said Defendants and mentioned in or endorsed upon said Policy that then said Insurance above mentioned should be void and of no effect, and that if the said Plaintiff or their assigns should hereafter make any other insurance on the same property (namely the property insured as aforesaid) and should not give notice thereof to the said Defendants and have the same endorsed on the said Policy or otherwise acknowledged by said Defendants in writing the said Policy should cease and be of no further effect and in case of any other Insurance upon the said property insured as aforesaid whether prior or subsequent to the date of said Policy the said Defendant should not in case of loss or damage be entitled to demand or recover of said Defendants any greater portion of the loss or damage sustained than the amount thereby insured should bear to the whole amount insured on said property and it was also in said Policy agreed and declared to be the true intent and meaning of the matter therein that in case the premises in said Policy mentioned should at any time after the making and during the continuance of said Insurance be appropriated applied or used to or for the purpose of Carriage or transportation of there any trade business or vocation denominated hazardous extra hazardous, or included in the memorandum of Special rates in the Conditions annexed to this Policy or for the purpose of Storing or Bonding there any of the Articles goods or Merchandizes in the Conditions of the aforesaid denominated hazardous extra hazardous, or included in the memorandum of Special

rates unless therein otherwise specially provided for or hereafter
agreed by the Defendants in writing and added to or indorsed
upon the said policy then & from thenceforth so long as the
same should be so appropriated applied or used the said policy
should cease and be of no force or effect: And it was moreover
in said policy declared that said Insurance was not inten-
ded to apply to or cover any books of account written
securities deeds or other Evidence of Title to lands nor to
bonds, ^{notes} or other evidences of debt nor to money or bullion
And that said Policy was made and accepted in reference
to the Conditions thereto annexed which were to be used and
resorted to in order to explain the rights and obligations
of the parties thereto in all cases not therein otherwise
specially provided for as by the said due bill or policy
of Insurance reference being thereto here will more fully ap-
pear And the said Plaintiff in fact says the said Condi-
tions annexed to said policy of Insurance or due bill
and in said policy mentioned or alluded to and as fol-
lows that is to say "Conditions of Insurance referred to in the
body of the foregoing policy 1. Goods not hazardous and
such as are usually kept in dry goods stores including
Coffee House Flour Household furniture and linen in-
cludes Rice Spice Sugars tea and other articles not com-
bustible 2. The following trades and occupations goods
wares and merchandises are denominated hazardous viz
Alcohol Beer kit seller Basket maker Stock Cabinet fur-
niture China Earthen & Glass ware or plate Glass in boxes
Crates or Casks Coffee plate Pottery Cotton in bales

let furnish (without use of fire except for heating them in
Hardware and Culling Jewellers Stock. Liquor in glass in
packed. Looking Glasses in boxes. Manila Rope in bales. Paint
ground in oil. Paper hangings. Porter houses. Potash pocket
book makers Stock. Printers of Newspaper rags in packages saw
makers Ship Chandlers. Spintons Liquor. Sugar Makers. Sta
tioners Stock Snuff makers. Threshed grain. Tin or shut iron
workers. Victroling houses watch makers Stock and Tolls
Wine in glass in packages window or plate glass in pack
ages:

Policy

The following trades and occupation goods, wares and merchan
dize are denominated extra hazardous. Viz. Basket makers
Straw bleacher Book sellers Stock. Blacksmiths. Boat Builders
Brass founders. China. Earthen or glass ware. Looking glasses
unpacked Confectioners Stock Cotton unpacked. Cooper. Copper
makers Smiths. Druggists and apothecaries. Fur dressers. Flax in
Bales. Hongs Makers. Gun makers ordnance. Hats makers. Hay
pressed in Bundles. Hemp in bales. Ink makers. Lamp Man
ufacturers. Lamp sellers Stock Lithographers. Milliners Stock
Morocco Manufacturers. Optical and Mathematical Instru
ment makers. Painters Stock. Perfumers Stock Phosphorus. Pictures
and prints. Printers of books and jobbing. Platts and Plated ware
Manufacturers Pocket Book makers. Plumbers, and Piloters
Saltstres. Silversmiths. Stables (for sale) Spirits of Turpen
tine. Store Manufacturers. Tobacco Manufacturers. Tobacco Man
ufacturers. Typecases Stock. Type or Stereotype manufacturers
Vanit. Window and Plate Glass unpacked. Wax. Bakers
Bark Mills. Blinn Makers. Bruiners. Book binders.

Blacksmiths, Boat Builders, Cabinet makers, Carpenters, Join-
ers, Chair or Coach makers workshops, Chemists, Cotton Mills Dy-
ers, Fergues, Fences, Frame Makers, Furnies, Fulling Mills, Linen Mill
Hat Manufactories, House building or repairing, Ink or Iron
black or lamp black Manufactories, Lining Stables, Lumber or
Mahogany yards, Malt houses, Metal and other mills, of all kinds
Musical Instrument makers, Oil Makers, Pump and Block Ma-
kers shops, Paper Mills, Rope Makers Saw Mills Shipbuilders
stock in the Yard, Ships or other vessels in port, or their Cargoes
or when building or repairing, Steam engines or Boats, Sugar
refineries, Tanneries, Tallow melters, or chandlers, Timber Yards, Hol-
ler mills, and generally all manufacturing establishments
and all trades requiring the use of fire heat or steam power
not before enumerated, will be insured at special rates of
premium. The following are not to be insured at any rate
of premium by Britton works, Distilleries, Glass Mills Gunpow-
der, Oil boiling houses, Oak Manufactories, Panoramas or other
Scenic Paintings, Patent Leather Manufactories, Sash or sash &
Blind factories, Saw Mills, Steam Planing Mills, Gas boil-
ing houses, Heaters, Turf cutting Manufactories, Tannery Makers,
Applications for insurance must specify the Construction &
Materials of the building to be insured or Containing the prop-
erty to be insured, by whom occupied, whether as a private
dwelling or how otherwise, its situation with respect to Contig-
uous buildings and their Construction and materials, whether
any Manufactory is Carried on within or about it and
in Case of goods and merchandize whether or not they
are of the description denominated hazardous extra hazard

and/or, or included in the memorandum of special rate
and a false description by the assured of a building or its con-
tents or the omission to make known any fact material to
the risk, or in a valuation policy, an over valuation shall
render absolutely void a policy issued upon such description
or valuation. But the Office will be responsible for the accu-
racy of surveys and valuations made by its agents. If after
insurance is effected either by the original policy or by the renew-
al thereof, the risk be increased by any means within the con-
trol of the assured, occupying in any way so as to render the
risk more hazardous, than at the time of insuring, such
insurance shall be void and of no effect. If during the insur-
ance any subsequent insurance should be made upon the prop-
erty hereby insured, or the risk be increased by the erection of bu-
ildings or by the use or occupation of neighboring premises or
otherwise, or if for any other cause the Company shall so elect
it shall be optional with the Company to Cancel this policy
in which case the Company will refund the premium for
the unexpired term time.

The insurance, whether original or Continued, shall be con-
sidered as binding, until the actual payment of the premi-
um.

6' Goods held in trust or on Commission, are to be insured as
as such, otherwise the policy will not cover such property
in case of loss, the names of the respective owners, shall be sub-
mitted with preliminary proofs of such loss, together with their
respective interests therein. Goods on storage must be
separately and specially insured.

7 Policies of Insurance, subscribed by this Company, shall not be assignable without the Consent of the Company, expressed by an 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 thereupon cease. And in case of any such transfer or change of title in the property insured by this Company, containing undivided interest therein, such insurance shall be void and cease.

8th This Company will not be liable for damage to property by lightning, aside from fire, nor for damage occasioned by the explosion of a steam boiler, nor for damage by fire resulting from such explosion, unless otherwise expressly provided. The keeping of gunpowder, for sale or on storage, upon or in the premises insured, or the lighting the same by Campfires or spirit lamps, without written permission in the policy, shall render it void. And this Company will not be liable for any loss caused by the gross wanton misconduct or culpable negligence of the assured, or by means of his intoxication.

9th Jewels, watches, Plates, Musical instruments, paintings, Statuary, Sculptures and Curiosities are not deemed to be included in any insurance unless an inventory thereof accompany the application for insurance or is inserted in the policy.

10th 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 all possible diligence in saving and preserving the property. And if they shall fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect, and there can be no abandonment of

the premises

1st All persons insured by this Company, and sustaining loss or damage by fire, shall forthwith to give notice thereof to the Company or its agent, and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands and verified by their oath or affirmation: they shall also declare on oath whether any and what other insurance has been made on the same property: What was the whole value of the subject insured: what was their interest therein in what general manner (as to trade, Manufacture, Merchandise or otherwise), the building insured or containing the subject insured, and the several parts thereof were occupied at the time of the loss, and who were the occupants of such building: and when and how the fire originated so far as they know and believe: and procure a Certificate under the hand of a Magistrate or Notary public (most contiguous to the place of the fire, and not concerned in the loss as a Creditor or otherwise or relative to the insured or sufferers) that he is acquainted with the Character and Circumstances of the person or persons insured and has made diligent enquiry into the facts set forth in the statement, and knows or verily believes that he she or they really and by misfortune, and without fraud or evil practice had or have sustained, by such fire, loss and damage to the amount therein mentioned, and also if required shall produce their books of account and other proper vouchers: and shall also, if required, submit to an examination under oath by the agent or Attorney of the Company, and answer all questions touching his, her or their knowledge of anything relating

to such loss or damage, or to their claim therefor, and subscribe such examination, the same being reduced to writing and until such proofs, declarations and certificates are produced and examination if required, the loss shall not be deemed payable. Also, if they there appear any fraud or false swearing, the insured shall forfeit all claims under this policy. Damage to buildings not totally destroyed shall be appraised by disinterested men mutually agreed upon by the assured and the Office or its agents, and 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 kind, and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The Damage shall then be ascertained by the examination and appraisal of said damage on each article by disinterested appraisers mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the Claimant, one half of the appraisers fees to be paid by the insurer. A copy of the written portion of the policy to be given with the affidavit of the Claimant in all Cases.

- 12) Payment of Losses shall be made in sixty days after sufficient proof has been received by the secretary in writing, and in Case ^{any} differences shall arise touching any loss or damage, it may be submitted to the judgment of Arbitrators indifferently chosen, whose award in writing shall be binding on the parties. In Case of any loss or damage to the property

insured, it shall be optional with the Company to replace the Articles lost or damaged with others of the same kind and equal goods and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention as to do within thirty days after the preliminary proofs shall have been received at the Office of the Company; and if no notice is received by the Company of a loss within sixty days after it occurred it shall be optional with the Company to reject or allow the claim; or any part thereof.

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

14th 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 assured.

15th When the property insured by this Company is damaged by or moved from a building in which it is exposed to fire and 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.

16th The Company will not be answerable for any loss arising.

from the use of fire in buildings unprovided with a good and substantial stone or brick chimney or in consequence of neglect or dereliction from the laws or regulations of Police made to prevent accidents by fire in places where laws and regulations on the subject exist.

17th It is furthermore hereby expressly provided that no suit or action against said Company for the recovery of any claim upon and 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 as by the said policy and the terms and Conditions thereto annexed reference being thereto here with more fully appears. And the said Plaintiffs in fact say, that at the time of the making said policy of insurance and from thence until the loss and damage hereafter mentioned they had an interest in said insured premises and property to a large amount to wit to the amount of all the money by them insured thereon to wit at Rockford in the County of DeKalb aforesaid and that afterwards to wit on the fourteenth day of July in the year one thousand eight hundred and fifty five the said premises and property insured policy of Insurance mentioned were burnt consumed and destroyed by fire which did not happen or take place by means of any

4
invasion insurrection riot or Civil Commotion or of any War
day or usurped power whereby the said Plaintiffs then and
there sustained damage to a large amount to wit to the amount
of Four thousand dollars insured on said premises and property
as aforesaid and hereinafter mentioned. And the said Plaintiffs
in fact further say that before the making and delivery by
the Defendants to the Plaintiffs of the Policy of Insurance above
mentioned and on the 11th day of May in the year last aforesaid
said the said Plaintiffs insured the said property and prem-
ises in said policy mentioned (by the description of the Stand
Manufactory) in a Certain Insurance Company known as
the Stephenson County Mutual Fire Insurance Company in
the sum of two thousand dollars of which policy the said
Defendants at the time of the making and delivery by
them of their said dea pol of policy of had due notice from
the Plaintiffs which Insurance with the said Stephen-
son County Mutual Insurance Company is mentioned in
the policy of Insurance of the Defendants above mention-
ed as follows "I do hereby insure" and that with the excep-
tion of the Insurance with the aforesaid Stephenson Coun-
ty Mutual Insurance Company as aforesaid the Plain-
tiffs aver that the said premises and property in the said
policy of the Defendants mentioned at the time of the ma-
king thereof were not nor have they at any time since be-
come in any Office but the said Defendants. And the
said Plaintiffs further say that the premises in the
said policy mentioned was not at any time after the
making and during the Continuance of said policy

affirmation ~~affirmation~~ caused to or for the purpose of carrying on or exercising therein any trade business or occupation denominated hazardous extra hazardous or included in the memorandum of special rates in the conditions annexed to said policy nor was the same at any time used for the purpose of storing or vending therein any of the Articles goods or merchandize in the Conditions aforesaid ~~denominated~~ ~~extra~~ denominated hazardous ~~extra~~ hazardous or included in the said memorandum of special rates unless in said policy specially provided or thereafter agreed by the Defendants in writing and added to or endorsed upon said policy and the said Plaintiff further say that they forthwith after said loss to wit on the 18th day of July in the year 1888 aforesaid gave notice thereof to the said Defendants and as soon as possible thereafter to wit on the 20th day of July of the same year at the place aforesaid did deliver in to the said Defendant a particular account as far as the nature of the Case would admit of such loss or damage signed with their own hands and verified by their oath or affirmation and did also ~~deliver~~ ^{declare} on oath whether any and what other insurance had been made on the same property what was the value of the subject insured what was their interest therein in what ~~special~~ ^{general} manner (as to trade manufacturing merchandize or otherwise) the building 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 where and how the fire originated so far as they knew or believed which ^{said} ~~statement~~

Verdict 4 15

Wm. dying

was with the Consent of the Defendants on the 24 day
of October in the same year amended by the Plaintiff the Defend
ants having ^{just} before that time expressly waived any imper
fiction or deflection ^{deficiency} in their previous Statement as aforesaid &
Consented to such amendment, and also at the same time pro
cure a Certificate under the hand of James M. Manslow Esq a
Justice of the Peace and Magistrate of the County of Hennepin a
foresaid (most contiguous to the place of the fire and not
Ancient in the said lot as a creditor or otherwise and not
related to the insured or sufferers) that he was acquainted with
the Character and Circumstances of the premises insured and had
made diligent enquiry into the facts set forth in the Statement
of the Plaintiff and truly believed that ^{they} the said Plaintiff real
ly and by misfortune and without fraud or evil practice had
sustained loss and damage to the amount therein mentioned.

And the Plaintiff further say that Altho they have in all
things conformed themselves to and performed and observed all
and singular the matters and things which were on their
part to be observed performed and fulfilled according to the
form and effect of said policy of Insurance and although
they have sustained damage and loss on occasion of said
fire to a large amount to wit to the amount of Four Thou
sand dollars and upwards. Yet the said Plaintiff in fact
say that the said loss and damages have not been paid
to them in money nor have the Defendants rebuilt the
said buildings and premises and replaced the said prop
ty insured and destroyed as aforesaid with other of equal
good ^d or more (altho sixty days since the aforesaid fire)

proof in the Condition of such policy mentioned above
mentioned were delivered to the Defendants as above men-
tioned have long since passed elapsed and expired) contrary
to the tenor and effect true intent and meaning of the
said due bill or policy and of the Covenants of the said de-
fendants in that whereby behalf so made as aforesaid
And the said plaintiff aver that the cause of Action herein
above set forth occurred in the County of Kingsbury and that
X the plaintiff at the time said Cause of Action accrued re-
sided and now resides in said County of Kingsbury: And
so the Plaintiff in fact says that the said Defendants altho
often requested so to do have not kept the said Covenant
so by them made as aforesaid, but have broken the same
and to keep the same with the Plaintiff have wholly refused
to wholly neglect and refused and still do neglect and re-
fuse to the plaintiff damages of three thousand dollars
and thereupon they brought &c

Jas M Wright Esq atty

Copy of Policy of Insurance above declared on
"Provia Marine Fire Insurance Company
\$2000

L. S. } By this Policy of Insurance, The Provia Marine
Fire Insurance Company, in consideration of
Forty dollars to them paid by the assured hereafter named
the receipt whereof is hereby acknowledged, do insure Lewis
Smith Esq & Co Against loss or damage by fire to the
Amount of Two thousand Dollars On their Stacks Factory

building including Machinery fixtures and building
is basement of Stone upper story of wood and is situated
on Rock River in the City of Rockford Ills all as is de-
scribed in Application and survey No 96. on file in this Office
\$2000 - other Insurance: And the said Company do hereby
by promise and agree to make good unto the said assured their
executors administrators and assigns, all such immediate
loss or damage not exceeding in amount the amount herein
insured, as shall happen by fire to the property, as above spec-
ified from the first day of June one thousand eight hundred
and fifty five (at 12 O'clock at noon) unto the first day of
June one thousand eight hundred and fifty six (at 12 O'clock
at noon) the said loss or damage to be estimated according
to the true and actual Cash Value of the property at
the time the same shall happen, and to be paid within
sixty days after notice and proof thereof made by the as-
sured, in Conformity to the Conditions annexed to this Policy
Provided Always, and it is hereby declared that this Compa-
ny shall not be liable to make good any loss or damage by
fire which may happen or take place by means of any insur-
sion insurrection, riot, or Civil Commotion, or of any milita-
ry or usurped power or any loss by thief or after a fire.
And provide further that in case the assured shall have at
ready any other insurance against loss by fire on the prop-
erty hereby insured, and not notified to this Company and
mentioned in or endorsed upon this Policy, then this insurance
shall be void and of no effect. And if the said assured or their
assigns shall hereafter make any other insurance on the

same property and shall not give notice thereof to this Com-
pany, and have the same endorsed on this instrument or other-
wise acknowledged by them in writing. This policy shall cease
and be of no further effect. And in Case of any other insurance
upon the property hereby insured, whether prior or subsequent
to the date of this Policy, the assured shall not, in Case of loss or
damage, be entitled to demand or recover of this Company any greater
portion of the loss or damage sustained than the amount here-
by insured shall bear to the whole amount insured on said prop-
erty and it is agreed and declared to be the true intent and mean-
ing of the parties hereto, that in Case the above mentioned prop-
erty shall at any time after the making and during the
continuance of this insurance be appropriated, applied or used
to or for the purpose of carrying on or exercising therein any
trade business or vocation denominated Hazardous, extra haz-
ardous, or included in the memorandum of special rates in the
Conditions annexed to this policy, or for the purpose of storing or
stowing therein any of the Articles goods or merchandises in
the Conditions aforesaid denominated Hazardous, extra Hazardous
or included in the memorandum of special rates, unless hereinafter
expressly provided for, or hereafter agreed by this Company in
writing and added ^{to} or endorsed upon this policy then and
from thenceforth so long as the same shall be so appropriated,
applied or used, these presents shall cease and be of no force or
effect. And it is moreover declared that this insurance is not
intended to apply to or cover any books of account, written or
printed deeds or other evidences of title to land, nor to bonds, bills
notes, or other evidences of debt, nor to money or billions and the

this policy is made and accepted in reference to the condition
here annexed which are to be used and recited to words
to explain the rights and obligation of the parties here in
all cases not herein otherwise specified, provided for
in writing whereof. The Rock' Mamm & Fire Insurance Compa-
ny have caused these presents to be signed by their President
and attested by their Secretary, in the City of Rock and State
of Illinois this first day of June 1835.

(Signed) Isaac Underhill President

(Signed) O'Holman Secretary

A full & complete Copy of the Condition, referred
to in the above Copy of policy and annexed to the same as
appears in the foregoing declaration in the body thereof which
Copy is here referred to and made a part of the above copy
of the original Policy &c

Jas M Thight Atty

Monday February 23. 1886.

David Luvs tal

vs

Complaint

The Irons Marine and Fire
Insurance Company

On motion of Plaintiff by their At
torney leave is granted them to a

mend their Declaration herein and by agreement of parties. It
is ordered that this Cause be continued at the Cost of the Plain
tiff. It is therefore ordered and Considered by the Court that
the defendant pay and recover of the Plaintiff their Costs and
Charges about the same expended and that they have execution
therefore

2. 3^d & 4th Counts being additional Counts filed by leave of Court

2^d Count

And whereas also heretofore to wit: On the first day of June in the year of our Lord one thousand eight hundred and fifty five at Peoria in the County of Peoria to wit at Rockford in the County of Winnebago aforesaid by a certain other deed poll or policy of Insurance then and there made and sealed with the Common seal of the said County defendants (so being a body Corporate and politic as aforesaid) and subscribed by the President of said Defendants and countersigned by their Secretary and which deed poll or policy of Insurance so made sealed ^{and} countersigned as aforesaid the said Plaintiff now being into Court here bearing date the same day and year aforesaid) in consideration of the sum of forty dollars then & there paid by the said Plaintiff to the said Defendant the said Defendants did then and there insure the said Plaintiff (by the name and description of Lewis Smyth Egge & Co) on their Steam factory buildings including Machinery & fixtures (which said building is therein described) was a basement of Stone upper Story of Wood and was situate situated on Rock River in the City of Rockford Ill and was in said policy described as being described in application and survey No 96. (The application and survey of said building for the purpose of obtaining such insurance meaning) against loss or damage by fire to the Amount of Two thousand dollars

And the said Defendants did then and there in and by their said policy agreed to and with the said Plaintiff to make good unto them their executors administrators and assigns all such immediate loss or damage not exceeding ^{in amount} the sum insured as aforesaid (being the sum of Two thousand dollars above mentioned) as should happen by fire to the property insured as above mentioned and in

said Policy specified from the first day of June in the year one thousand eight hundred fifty five (at twelve O'clock at noon) unto the first day of June one thousand eight hundred fifty six at twelve O'clock at noon) the said loss or damage to be estimated according to the true and actual Cash Value of the said property insured at the time the same should happen and to be paid within sixty days after notice and proof thereof made by the defendants in conformity to the Conditions annexed to the said Policy: and it was in said and by said Policy of Insurance provided and declared that the said Plaintiff should not be liable to make good any loss or damage by fire which might happen or take place by means of any Invasion Insurrection riot or civil Commotion or by any Military or usurped power or any loss by theft at or after a fire. And it was also therein or therein further provided that in Case the said defendants should have had already (at that time meaning) any other Insurance against loss by fire on the property therein insured and not notified to the said Defendants and mentioned in or enclosed and noted up on said Policy that their said Insurance above mentioned should be void and of no effect: And that if the said Plaintiff or their assigns should thereafter make any other insurance on the same property (meaning the property insured as aforesaid) and should not give notice thereof to the said Defendants and have the same noted on the said Policy or otherwise acknowledged by said Defendants in writing the said Policy should cease to be of no further effect. And in Case of any other Insurance upon the said property insured as aforesaid whether prior or subsequent to the date of said Policy the said Defendants should not in Case of Loss or damage be entitled to demand or recover of said

Defendants any greater portion of the loss or damage sustained than
the amount thereby insured should bear to the whole amount
insured on said property: And it was also in said policy agreed
and declared to be the true intent and meaning of the parties thereto
that in case the promises in said policy mentioned should at any
time after the making and during the continuance of said insur-
ance be appropriated applied or used to or for the purpose of carry-
ing on or exercising therein any trade business or vocation denomi-
nated hazardous extra hazardous or included in the memorandum
of Special rates in the Conditions annexed to said policy or for the
purpose of storing or vending therein any of the Articles goods or
Merchandise in the Conditions aforesaid denominated hazardous
extra hazardous or included in the memorandum of Special rates
x unless therein otherwise specially provided for or thereafter agreed
by the defendants in writing and added to or endorsed upon said
policy then from thenceforth so long as the same should be so ap-
propriated applied or used the said policy should cease and be
of no force or effect: And it was moreover in said policy declared
that the said Insurance was not intended to apply or cover any
books of account written securities deeds or other writings of title
bonds notes bonds bills notes or other writings of debt
nor to money or bullion: and that the said policy was made
and accepted in reference to the Conditions thereto annexed which
were to be used and resorted to in order to explain the rights and
obligations of the parties thereto in all cases not therein otherwise
specially provided for as by the said deed poll or policy of Insurance
referred being thereto had well more fully appear

And the said plaintiff aver that the said Conditions

in the said policy refer to were and are in all respects
the same set forth and contained in the first Count herein above
set out as by the said policy of Insurance and Conditions thereto an-
nexed will when produced more fully appear referred being then
to hand. And the said Plaintiffs in fact say that at the time of
the making of said policy of Insurance and from thence until the
loss and damage herein after mentioned they had an interest in
said insured premises and property to a large Amount to wit to the
Amount of all the money by them insured thereon and more to wit
at Rockford in the County of Hennepin aforesaid. And that
afterwards to wit on the Fourteenth day of July in the year one
thousand eight hundred and fifty five the said premises and prop-
erty in said policy of Insurance mentioned were burnt Consumed
and destroyed by fire which did not happen or take place by
means of any invasion insurrection riot or Civil Commotion or of
any Military or usurped power whereby the said Plaintiffs then
and there sustained damage, to a large Amount to wit to the am-
ount of four thousand dollars and more and a greater amount
than the Amount insured on said premises and property as aforesaid
And the said Plaintiffs in fact further say that before the making
and delivery by the Defendants to the Plaintiff of the policy of Insur-
ance above mentioned and on the 11th day of May in the year last
aforesaid the said Plaintiff insured the said property and premises
in said policy mentioned (by the description of their Sash Man-
ufactory) in a certain Insurance Company known as the Ste-
phenson County Mutual Insurance Company in the sum of
two thousand dollars of which policy the said Defendants at
the time of the making and delivery by them of their said due

policy or policy had due notice from the Plaintiff which
insurance with the said Stephenson County Mutual Insurance Com-
pany is mentioned in the policy of Insurance of the Defendants a
bond mentioned as follows to wit "\$2000.00 Insurance" and
that with the exception of the Insurance with the aforesaid
Stephenson County Mutual Insurance Company the Plaintiff
aver that the said premises and property in the said policy
of the Defendants mentioned at the time of the making thereof
were not nor were they at any time insured in any of-
fice but the said Defendants. And the said Plaintiff further
say that the premises in the said policy mentioned was not at
any time after the making and during the continuance of
said policy applied appropriated or used to or for the purpose
of carrying on or exercising therein any trade business or vocation
denominated hazardous extra hazardous or included in the mem-
orandum of special rates in the Conditions annexed to said
policy nor was the same at any time used for the purpose
of storing or vending therein any of the Articles goods or mer-
chandise in the Conditions aforesaid denominated hazardous
or extra hazardous or included in the memorandum of special
rates in the said policy specially provided or there-
after agreed by the Defendants in writing or added to or in-
closed upon said policy. And the said Plaintiff further
say that they forthwith after said loss to wit on the 16th day of
July in the year 1883. aforesaid gave notice thereof to them
of the said Defendants and as soon as possible thereafter to wit
on the 18th day of July of the same year at the place aforesaid
did deliver unto the said Defendants a particular account

of such loss or damage signed with their own hands and
verified by their Oaths and did also declare on oath whether
any and what insurance had been made on the same prop-
erty, what was the value of the Subject insured what was the
interest therein in what general manner (as to Trade Manufacture
merchandise, ^{or otherwise}) the building containing the Subject insured and
the manufacture 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 knew or believed and
did at the same time produce a certificate under the hands of
James B. Maulson Esq. a Justice of the Peace and Magistrate
of the County of Hennebago aforesaid (most contiguous to the
place of the fire and not named in the said loss as a wit-
ness or otherwise and not related to the insured or sufferers) that
he was acquainted with the character and Circumstances of the
Premises insured and had made diligent enquiry into the facts
set forth in the Statement of the Plaintiff and truly believe that
they the said Plaintiff truly and by misfortune and without
fraud or evil practice had sustained loss and damage to the a-
mount therein mentioned

And the Plaintiff further say that although they have
in all things Conformed themselves to and performed and observed
all and singular the matters and things which are on their
part to be observed performed and fulfilled according to the
form and effect of said policy of Insurance and although they
have sustained damage and loss on occasion of said fire to a
large Amount to wit to the Amount of four thousand dollars
and upwards, and altho the stock and funds of said

Defendants always from the time of the making said deed poll or policy of Insurance hitherto have been right and sufficient to pay to the said plaintiff the said damages and loss sustained by the said fire to wit at the place aforesaid yet the said Plaintiff in fact say that the said loss and damages have not been paid to them in money nor have the said Defendants rebuilt the said buildings or premises and replaced the said property insured and destroyed as aforesaid with others of equal goodness. Altho' this being since the aforesaid preliminary proofs in the Conditions of said policy mentioned & above mentioned were delivered to the Defendants as above mentioned have long since elapsed and expired Contrary to the tenor and effect true and intent and meaning of the said deed poll or policy and of the Covenants of the said Defendants in that behalf so made as aforesaid.

X
3 Count

And whereas also heretofore to wit on the first day of June in the year of our Lord one thousand eight hundred and fifty five at Peoria in the County of Peoria to wit at Rockford in the County of DeKalb aforesaid by a Certain Certain other deed poll or policy of Insurance then and there made and sealed with the common seal of the said Defendants (so being a body Corporate and Politic as aforesaid) and subscribed by the Defendant President of said Defendants and Countersigned by their Secretary (and which said deed poll or policy of Insurance so sealed subscribed and Countersigned as aforesaid the said plaintiffs now being into Court here bearing date the same day and year aforesaid in consideration of the sum of Forty dollars then & there

paid by the said Plaintiff to the defendants the said Defendants did then and there insure the said plaintiff by the name and description of Swiss Smyth Esq & Co on their Stand Factory Building including Machinery and fixtures which said building as then described was a basement of Stone Upper Story of Wood and was situated on Rock River in the City of Rockford Ills and was in said Policy of description as being described in application and survey &c &c. (The application and survey of said building for the purpose of obtaining such insurance meaning) against loss or damage by Fire to the Amount of Two thousand dollars: And the said Defendants did then and there in and by their said Policy agree to and with the said Plaintiff to make good unto them their executor administrator and assigns all such immediate loss or damage not exceeding in Amount the sum of insured as aforesaid (being the sum of Two thousand dollars above mentioned) as should happen by Fire to the property insured as above mentioned and in said policy specified from the first day of June in the year of our Lord one thousand eight hundred and fifty five at twelve O'clock at noon. Unto the first day of June one thousand eight hundred and fifty six at twelve O'clock at noon: The said loss or damage to be estimated according to the true and actual cash value of the said property insured at the time the same should happen and to be paid within sixty days after notice and proof thereof made by the Defendants in conformity to the Conditions annexed to the said Policy. And it was

in and by said Policy of Insurance provided and declared
that the said Plaintiff should not be liable to make good any loss
or damages by Fire which might happen or take place by reason
of any Insurance Invasive Insurance not or Civil Commotion
or by any Military or armed power or any loss by Theft at or
after a fire and it was also therein and therein further provided
that in Case the said Defendants should have had already (at
that time meaning) any other Insurance against loss by fire or
the property therein insured and not notified to the said Defen-
dants and mentioned in or endorsed upon said Policy that
the said Insurance above mentioned should be void and of no
effect and that if the said Plaintiff or their assigns should there-
after make any other Insurance on the same property (meaning the
property insured as aforesaid) and should not give notice thereof
to the said Defendants and have the same endorsed on the said
Policy or otherwise acknowledged by said Defendants in writing
the said Policy should cease and be of no further effect and
in Case of any other insurance upon the said property insured as
aforesaid whether prior or subsequent to the Date of said Policy
the said Defendants should not in any Case of loss or damage be
entitled to demand or recover of said Defendants any greater por-
tion of the loss or damage sustained than the amount therein
insured should bear unto the whole amount insured on said
property and it was also in said Policy agreed and declared
to be the true intent and meaning of the parties thereto that
in Case the promises in said Policy mentioned should at
any time after the making and during the continuance of
said insurance be appropriated applied or be used to or

for the purpose of Carrying on or carrying there any trade
business or a vocation denominated hazardous extra hazardous or
included in the memorandum of special rates in the Condition
annexed to said Policy or for the purpose of storing or own-
ing therein any of the Articles goods or merchandise in the Con-
ditions aforesaid denominated hazardous Extra hazardous or in-
cluded in the memorandum of Special rates unless there be other-
wise specially provided for hereafter agreed by the Defendants in
writing and added to or endorsed upon said Policy then and
therefrom thenceforth so long as the same should be so appropria-
ted applied or used the said Policy should cease and be of
no force or effect. And it was moreover in said Policy declared
that the said Insurance was not intended to apply or cover
any Books of accounts written securities deeds or other evidence
as of title to lands nor to bonds Bills notes or other evidences of
debt nor to money or billions and that the said Policy was made
and accepted in reference to the Conditions thereunto annexed
which were to be used and resorted to in order to explain the
rights and obligations of the parties thereto in all cases not
otherwise specially provided for by the said said Policy
or Policy of Insurance reference being thereto has well more
fully appeared. And the said Plaintiff avers that the said
Conditions in the said Policy aforesaid were and are in
all things respects the same set forth and contained in
the first Count herein above set forth out as by the said Policy of
Insurance and Conditions thereto annexed will when pro-
duced more fully appear reference being thereto has. And
the said Plaintiff in fact says that at the time of the making

of said Policy of Insurance and from thence until the loss
or damage hereafter mentioned they had an interest in said
insured premises, the money by them insured thereon and
more to wit at Rockford in the County of Hennepin aforesaid
and that afterwards to wit on the fourteenth day of July
in the year of our Lord one thousand eight hundred and fifty
five the said premises and property in said Policy of In-
surance mentioned were burnt consumed and destroyed by
Fire which did not happen or take place by means of any
invasion, insurrection riot or Civil Commotion or of any mili-
tary or usurped power whereby the said Plaintiff then and
there sustained damage to a large amount to wit to the amount
of Four thousand Dollars and more and a greater amount than
the amount insured on said premises and property aforesaid
And the said Plaintiff in fact further say that before the making
and delivery^{by} of the Defendants to the Plaintiffs of the Policy of
Insurance above mentioned and on the 11th day of May in the
year^{last} above mentioned the said Plaintiffs insured the said prop-
erty and premises in said Policy mentioned (by the descrip-
tion of their Sash Manufacturing) in a certain Insurance Com-
pany known as the Stephenson County Mutual Fire Insura-
Company in the sum of Two thousand dollars of which Policy
the said Defendants at the time of making and delivery of
by them of the said Deed pole and Policy had disinter-
ested from the Plaintiff which Insurance with the said Step-
henson County Mutual Insurance Company is mentioned
in the Policy of Insurance of the Defendants above mentioned
as follows to wit "for Insurance" and that with

the exception of the Insurance with the aforesaid St. John's
County Mutual Insurance Company the Plaintiffs Avise that the
said premises and property in the said Policy of the Defendants
mentioned at the time of the making thereof were not nor were
they at any time since insured in any Office but the said
Defendants: And the said Plaintiffs further say that the
premises in the said Policy mentioned was not at any time
after the making and during the Continuance of said Policy
applied appropriated or used to or for the purpose of carrying
on or exercising therein any trade business or vocation
denominated hazardous extra hazardous or included in the
memorandum of special rates in the Conditions annexed to
said Policy nor was the same at any time used for the pur-
pose of storing or bonding therein any of the Articles goods or
Merchandise in the Conditions aforesaid denominated hazar-
ous extra hazardous or included in the memorandum
of special rates unless in said Policy specially provided or
thereafter agreed by the said Defendants in writing or added
to or endorsed upon said Policy: And the said Plaintiffs fur-
ther say that they forthwith after said loss to wit on the 16th
day of July in the year 1855 aforesaid gave notice thereof to
the said Defendants by delivering thereof to the Agent of the said
Defendants and as soon as possible thereafter to wit on the
18th day of July last aforesaid did deliver to the said Defen-
dants a particular an account of said loss and damages
as was practicable signed with their own hands and verified
by their oaths and did also as fully as practicable deliver
on oath whether any and what Insurance had been made on

the same property what was the value of the subject insured what was their interest therein in what manner (as to Trade Manufacturing Merchandise or otherwise) the building containing the subject insured and the several parts thereof were occupied at the time of the loss and who are the occupants of said buildings and when and how the fire originated so far as they knew or believed and did at the same time produce a Certificate under the hand of James L. Manlon Esq a Justice of the Peace and Magistrate of the County of Kingsburgh aforesaid (most Contiguous to the place of the fire and not Concerned in the said loss as a Creditor or otherwise and not related to the insured or offerors) that he was acquainted with the Character and Circumstances of the Persons insured and had made due enquiry into the Cause and origin of the fire by which the Starch factory of the Plaintiff was destroyed also to the property destroyed and only believed that they (meaning the said Plaintiff) really and by Misfortune without fraud or evil practice had sustained by such fire loss and damage to the amount as set forth within affidavit therein annexed.

And the Plaintiff further say that afterwards and on the 24th day of October 1833. they did deliver in a more particular Statement to the Defendants of all the matters set forth within their first Statement and declaration herein above in this Court mentioned and did thereby more particularly State the extent of their loss by said fire the actual value of the premises and property destroyed of the other insurance thereon as above stated and in respect to origin of said fire which said last described Statement was signed by the Plaintiff and verified in the same manner

that the original Statute was signed and ratified: And the Plaintiffs further say that altho they have in all things conformed themselves to and performed and observed all and singular the matters and things which were on their part to be observed performed and fulfilled according to the form and effect of said Policy of Insurance and altho they have sustained damage and loss on occasion of said Fire to a large amount to wit to the amount of four thousand dollars and upwards and altho the stock and funds of said Defendants ^{always} from the time of the making said deed Poll or Policy of Insurance hitherto have been and yet are sufficient to pay the said Plaintiffs the said damage and loss sustained by the said fire to wit at the place aforesaid yet the said Plaintiffs in fact say that the said loss and damages have not been paid to them in money nor have the said Defendant rebuilt the said buildings and premises and replaced the said property insured and destroyed as aforesaid with others of equal goodness altho sixty days since the aforesaid Preliminary proofs in the Conditions of said policy mentioned and above mentioned were delivered to the Defendants as above mentioned have long since elapsed and expired: Contrary to the true and effect true intent and meaning of the said Deed Poll or Policy and the Covenants of the said Defendants in their behalf so made as aforesaid:

4th Count And whereas also herebefore to wit on the first day of June in the Year of our Lord one thousand eight hundred and fifty five at Pross in the County of Pross to wit at Rockford in the County of Humboldt aforesaid by a certain other deed poll

on Policy of Insurance then & there made and sealed with
the Common seal of the said Defendants (be being a body Corpo-
rate and Politic as aforesaid) and subscribed by the Pres-
ident of said Defendants and Countersigned by their secretary
And which Ored Pol of Policy of Insurance so sealed subscribed
and Countersigned as aforesaid the said Plaintiffs now be-
ing bring into Court here bearing date the same day and year
aforesaid in Consideration of the sum of forty Dollars then and
there paid by the said Plaintiffs to the Defendants the Defend-
ants did then and there insure the said Plaintiffs (by the names
and description of Lewis Smyth Esqr & Co) on their Store & Ware-
house Building including Machinery and fixtures which said
building as therein described was a basement of Stone upper
Story of Wood and was situated on Rock River in the City of
Rockford and was in said Policy described as being described
in application and survey No 96 (the application and
survey of said building for the purpose of obtaining such in-
surance meaning) against loss or damage by fire to the amount
of two thousand dollars;

And the said Defendants did then & there in and by
their said Policy agree to and with the said Plaintiffs to make
good unto them their Executors Administrators and assigns all
such immediate loss or damage not exceeding in amount the
sum of insured as aforesaid (Being the sum of two thousand
Dollars ^{above} mentioned) as should happen by fire to the prop-
erty ^{insured} ~~insured~~ as above mentioned and in said Policy spec-
ified from the first day of June in the year of our Lord one
thousand eight hundred and fifty five at twelve O'clock at

noon unto the first day of June one thousand eight hundred
and fifty six at twelve O'Clock at noon The said loss or damage
agreed to be estimated according to the true and actual Cash
Value of the said Property Insured at the time the same
should happen and to be paid within sixty days after notice
and proof thereof made by the Defendants in Conformity to the con-
dition annexed to the said Policy, and it was in and by
said Policy of Insurance provided and declared that the
said Plaintiffs should not be liable to work make good any
loss or Damage by Fire which might happen or take place by rea-
son of any Invasion Insurrection riot or Civil Commotion or by
any Military or usurped power or any loss by theft at or after
a fire and it was also therein and therein further provided
that in Case the said Defendants should have had already (at
that time meaning) any other insurance against loss by fire
on the Property thereby insured and not satisfied notified to
the said Defendants and mentioned in or endorsed upon said
Policy: That then said Insurance above mentioned should be void
and of no effect and that if the said Plaintiff or their assigns should
hereafter make any other Insurance on the same Property (meaning
the Property insured as aforesaid); and should not give notice
thereof to the said Defendants and have the same endorsed
on the said Policy or otherwise acknowledged by the said
Plaintiffs in writing, the said Policy should cease and be of
no further effect and in Case of any other insurance upon
the said Property insured as aforesaid whether prior or
subsequent to the date of said Policy, the said Plaintiffs should
not in Case of loss or damage be entitled to demand or recover of

said Defendants any greater portion of the loss or damages sustained than the amount thereby insured should bear into the whole amount insured on said property and it was also in said Policy agreed and declared to be the true intent and meaning of the parties thereto, that in case the premises in said Policy mentioned should at any time after the making and during the continuance of said insurance be appropriated applied or used to or from for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous extra hazardous or included in the memorandum of special rates in the Conditions annexed to said Policy or for the purpose of Storing or Vending therein any of the articles Goods or Merchandise in the Conditions aforesaid denominated hazardous extra hazardous or included in the memorandum of Special rates unless therein otherwise specially provided for or hereafter agreed by the Defendants in writing and added to or enclosed upon said Policy, then from thenceforth so long as the same should be so appropriated applied or used the said Policy should cease and be of no force or effect, and it was moreover in said Policy declared that this said Insurance was not intended to apply or cover any Books of accounts written securities deeds or other evidences of title to lands: Nor to Bonds bills notes or other evidences of debt: Nor to money or Bullion, and that the said policy was made and accepted in reference to the Conditions thereto annexed which were to be used and recited to in order to explain the rights and obligations of the parties thereto in all Cases not otherwise therein specially provided

for or by the said Dred Poll or Policy of Insurance reference be
ing charts had will more fully appear: And the said Plaintiff avers
that the said Conditions in the said Policy referred to were and
are in all respects the same set forth and contained in the first Count
herein above set out as by the said Policy of Insurance and Condition
charts annexed will when produced more fully appear reference
being charts had, and the said Plaintiff in fact say that at
the time of the making of said Policy of Insurance and from thence
until the loss and damage hereinafter mentioned they had an
interest in said Insured premises and property to a large amount
to wit to the amount of all the money by them insured thereon: the
more to wit at Rockford in the County of Hennepin aforesaid
and that afterwards to wit on the fourteenth day of July in
the year of our Lord one thousand eight hundred and fifty two
the said premises and property in said Policy of Insurance
mentioned were burnt consumed and destroyed by Fire -
which did not happen or take place by means of invasion
insurrection riot or civil commotion or of any Military or
usurped power whereby the said Plaintiff then and there
sustained damage to a large amount to wit to the amount of
Four thousand dollars and more and a greater amount
than the amount insured on said premises and property
as aforesaid, and the said Plaintiff in fact further say that
before the making and delivery by the Defendants to the Plain-
tiffs of the Policy of Insurance above mentioned and on the
11th day of May in the year last above mentioned the said
Plaintiffs insured the said property and premises
in said Policy mentioned (by the description of their

Slack Manufactory) in a certain insurance Company known as the Stephenson County Mutual Fire Insurance Company in the sum of Two thousand dollars, of which Policy the said Defendants at the time of the making and delivery by them of the said deed Poll or Policy had due notice from the Plaintiff, which Insurance with the said Stephenson County Mutual Insurance Company is mentioned in the Policy of Insurance of the Defendant above mentioned as follows: to wit "of 2000. other Insurance" and that with the exception of the Insurance with the aforesaid Stephenson County Mutual Insurance Company, the Plaintiff avers that the said premises and property in the said Policy of the Defendant mentioned at the time of the making thereof were not nor were they at any time since insured in any Office but the said Defendant And the said Plaintiff further say that the premises in the said Policy mentioned was not at any time after the making and during the Continuance of said Policy applied appropriate or used to or for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous Extra hazardous or included in the memorandum of special rates in the Conditions annexed to said Policy nor was the same at any time used for the purpose of storing or vending therein any of the Articles goods or Merchandise in the Conditions aforesaid denominated hazardous Extra hazardous or included in the memorandum of special rates unless in said Policy specially provided or thereafter agreed by the Defendants in Writing or added to or endorsed upon said Policy. And the said Plaintiff further say that they forthwith after said loss to wit on the 18th day of July in the year 1835 aforesaid gave notice thereof to the said Defendant

by delivering such notice to the agent of the Defendants and
as soon as possible after said fire to wit on the same day
and your last aforesaid did deliver unto the said Defen-
dants an account of said loss & damages as particularly
or practicably signed with their own hands and verified
by their own affidavits and did also declare on oath whether
and what insurance had been made on the same property, what was
the cost thereof and their interest therein, who were the occu-
pants thereof. And when ^{now} where the fire originated so far as
they knew or believed, and did at the same time procure a cer-
tificate under the hands of James B. Mandlow Esq. a Justice of the
Peace and Magistrate of the County of Kingsburgh aforesaid (not
contiguous to the place of the fire and not concerned in the said
loss as a Creditor or otherwise and not related to the insured
or sufferer) that he was acquainted with the character and
circumstances of the persons insured and had made due in-
quiry into the cause and origin of the fire by which the Stand-
Factory of the Plaintiff was destroyed and verily believed that
they (meaning the Plaintiffs really & by misfortune without
fraud or evil practice) had sustained damages to the amount
as set forth in their Affidavit therunto annexed. And the Plain-
tiff further say that afterwards and on the 29th day of October
1835 they delivered to the Defendants a more certain and particu-
lar statement of the matter set forth in their first Statement &
Declaration above and particularly did with greater cer-
tainty as to the general occupancy of said buildings des-
troyed which said Statement was signed and verified by
them in the same manner their first Statement was and

the said Plaintiff say and aver that all further and more specific statements declarations accounts and preliminary proofs on the part of the Plaintiff of their said loss by the said Defendants duly and fully verified, whereby the said proofs be true and are fully sufficient according to the terms of said Policy and the same in that behalf. And the Plaintiffs further say that altho they have in all things conformed themselves to and performed and observed all and singular the matters and things which were on their part to be observed performed and fulfilled according to the form and effect of said Policy of Insurance and altho they have sustained damages and loss on occasion of said fire to a great amount to wit to the amount of four thousand dollars and upwards and altho the stocks and funds of said Defendants always from the time of the making said Deed Poll or Policy of Insurance hitherto have been and yet are sufficient to pay to the said Plaintiffs the said damages and loss sustained by the said fire to wit at the place aforesaid yet the said Plaintiffs in fact say that the said loss and damages have not been paid to them in money nor have the said Defendants rebuilt the said buildings and premises and replaced the said property insured and destroyed as aforesaid with others of equal goodness altho sixty days since the aforesaid preliminary proofs in the Conditions of said Policy mentioned and above mentioned were delivered to the Defendants as above now would have long since elapsed and expired Contrary to the tenor and effect true intent and meaning of the said Deed Poll or Policy and of the Covenant of the said Defendants

in their behalf so made as aforesaid (The declaration
in this Cause is amended by the insertion of the three forego-
ing Counts into the original declaration between the end of the
first Count and the ad damnum clause thereof which ad dan-
num Clause applies as well to these three additional Counts
as to the first original Count)

For M Wright Plffs atty

David Lewis

Joshua B Smith

Henry C Mosler

Clark Strong

vs

The Peoria Marine and

Fire Insurance Company

In the Circuit Court of Peoria
County, July Term A.D. 1856.

- 1st And now Come the said Defendants and defend the money
inguing where we say as to the 1st & 2^d Counts Actio Non
because they say that the said supposed writing obligatory
in said Plaintiffs declaration mentioned is not their debt
of this they put themselves upon the Country &c
- 2^d And for further Plea in this behalf the said defendants as to
the 1st & 2^d Counts say Actio Non because they say that the
said Building Machinery fixtures &c in said Plaintiffs de-
claration mentioned were not destroyed by fire as stated in said
Declaration out and of this they put themselves upon the
Country &c
- 3^d And for further Plea in this behalf the said Defendant
say as to 1st & 2^d Counts Actio Non because they say that
the said Plaintiffs did not as required by the terms and
Conditions of the said Policy of Insurance in said declara-
tion mentioned: And the Conditions annexed to & made
part of said Policy, forthwith give notice to the Defendants
or their agent of the alleged loss or damage by fire in
said Declaration mentioned and of this they put them-
selves upon the Country &c

4th And for further plea in this behalf the said Defendants say as to 1st & 2^d Counts Actis Non vicimus they say that the said Plaintiffs did not nor would as soon after the said Alleged loss or damage by fire in said Declaration mentioned as possible deliver in and furnish the said defendants with a particular Account of such loss or damage as required by said Policy and the Conditions thereof annexed and made part thereof. But so to do wholly neglected and refused and of this they put themselves upon the Country &c

5th And for further plea in this behalf the said Defendants say as to the 1st & 2^d Count Actis Non vicimus because they say that the said Plaintiffs did not nor would as soon after the said Alleged loss or damage by fire in said Declaration mentioned as possible deliver in and furnish the said defendants with a particular account of such loss or damage, signed by their own hands and verified by their own oath or affirmation, including therein a copy of the written portion of the said Policy in said Declaration described, as required by the said Policy, and the Conditions thereof annexed and made part thereof. But so to do so wholly neglected and refused and of this they put themselves upon the Country &c

6th And for further plea in this behalf the said Defendants say as to the 1st & 2^d Count Actis Non vicimus because they say that the said Plaintiffs did not nor would forthwith after the Alleged loss and damage by fire as in said Declaration mentioned give notice thereof to the said Defendants

or their Agents as required by the said Policy of Insurance and the Conditions thereto attached and made part thereof but neglected and refused so to do for a long space of time & with for the space of five days next ensuing the said alleged loss or damage occasioned as aforesaid and in said Plaintiff declaration mentioned and of this they put themselves upon the Country &c

7th And for further Plea in this behalf the said Defendants say as to the 1st & 2^d Counts Actio Non because they say that on the day of June A.D. 1835 and after the making of the said Policy of Insurance and before the alleged loss or damage by fire as stated in said Declaration to wit at the County aforesaid the said Plaintiff without the Consent of the said Defendants, expressed by endorsement made on the said Policy then and there transferred and assigned the said Policy to James M. Wright Esq of the County aforesaid as Trustee of Alfred Ogilthorn of Essex County, New Jersey as collateral security for the payment of the sum of Four thousand six hundred dollars then and there due and owing from the said Plaintiff to the said Alfred Ogilthorn. Contrary to the terms and provisions of the said Policy and the Conditions thereto annexed and made part thereof. And this the said Defendants are ready to verify wherefore they pray Judgment &c

8th And for further Plea in this behalf the said Defendants say as to the 1st & 2^d Counts Actio Non because they say that the said Plaintiff did not sue within as soon after the said alleged loss or damage by fire in said declaration —

mentioned or possibly deliver in and furnish the said Defendants with a particular account of such loss or damage signed by their own hands and verified by their own oath or affirmation. Stating therein what was the value of the premises or subjects insured as required by the said Policy and the Conditions thereto annexed and made part thereof. But to do so wholly neglected and refused. And of this they put themselves upon the Country &c

9th And for further Plea in this behalf the said Defendants say as to the 1st & 2^d Counts Actio Non because they say that at the time of the making of the said Policy in said Declaration mentioned the said Plaintiff represented and warranted to the said Defendants that there was the sum of two thousand dollars insured on the said Starch Factory Machinery and all fixtures pertaining to the said Factory in said Declaration mentioned. Whereas in truth and in fact there was not the sum of two thousand dollars nor any other sum insured on said property at the time when &c And this the said Defendants are ready to verify. Wherefore they pray Judgment &c

10th And for further Plea in this behalf the said Defendants say as to the 1st & 2^d Counts Actio Non because they say that at the time of the making of the said Policy in the said Declaration mentioned the said Plaintiff represented and warranted that there was a force pump attached to said Starch factory and premises insured and Rock River to feed it. Whereas in truth and in fact there was not at the time when &c nor at any other time

any such force pump, with Rock River to feed the same in any manner attached to said premises as stated and warranted by the Plaintiff. And thus the said Defendants are ready to verify, wherefore they pray judgment &c

11th And for further Plea in this behalf the said Defendants say as to the 1st & 2^d Counts Actio non because they say that after the making and execution of the said supposed Policy in said Plaintiff declaration described to wit on the 2^d day of June A.D. 1855. at the County aforesaid. The said Plaintiff made and created an incumbrance and deed of trust upon the said premises to one James M. Wright Insuree for Alfred Oughellies for the sum of Four thousand six hundred dollars, thereby greatly lessening the value of said Plaintiff interest in the said premises and thus the said Defendants are ready to verify wherefore they pray judgment &c

12th And for further Plea in this behalf the said Defendants say as to the 1st & 2^d Counts Actio non because they say, that at the time of Making the said Policy in said Declaration mentioned, the said Plaintiff falsely and fraudulently Represented to the said Defendants, that the property described in said policy and therein insured was supplied with a good and sufficient force Pump, which was fed by Rock River and which would be useful and efficient in extinguishing fire &c Whereas in truth and in fact the said property & premises were not supplied with a good and sufficient force pump which was fed by Rock River as stated

and represents by the said Plaintiffs and this the said De-
fendants are ready to verify, wherefore they pray judgment
so.

13th And for further Plea in this behalf the said Defendants say
as to 1st & 2^d Counts Action Now because they say that at the time
of making the said Policy in the said Declaration mentioned
the said Plaintiffs falsely and fraudulently represented to the
said Defendants that the property described in said Pol-
icy and therein insured was supplied with a good and
sufficient force pump which was fed by Rock River and
which would be useful and efficient in extinguishing fires
and this the said Defendants aver that in order to rendering
such force pump useful for the purposes aforesaid it was
necessary and indispensable that there should be a good sub-
stantial and sufficient hose to be used in Cases of fire &
that without such hose attached such force pump would
be wholly and entirely useless as a force pump for the pur-
poses aforesaid. Whereas in truth and in fact the said
property and premises were not supplied with a good and
sufficient force pump which was fed by Rock River with
a hose attached or that could be attached or that could
be attached so as in any manner to render the same use-
ful or efficient in extinguishing fires. And this the said
Defendants are ready to verify wherefore they pray judg-
ment so.

J. H. Purser

Marsh & Brown

for Defendants

Conclusion instead of alleging facts X
~~John Wright Plff. Atty.~~

7

The Hon. Master of
Insurance Company

Atty

2
2

David Lewis vs

And the said Deft as to the
said 3^d & 4th Counts of the said

Plff declaration say that they each of them are not
sufficient in law &c. And for Cause of Demurrer the said
Deft, set forth that said Counts are double in that they a
re several different times of giving the notice required to be
given by said Plff according to the terms of the instru-
ment on which this suit is brought

And the said Counts avow a time of giving such
notice different from the time required by the terms
of said instrument

And that said Counts are otherwise de-
fective &c I Move for Dismissal

21
this entry should be inserted after
the previous entry before the next
entry B

Tuesday September 29, 1836

David Lewis & Co

vs

The Bond-Merchants

Fire Insurance Company

Complaint

On motion of Plaintiff leave is
granted them to reply docket

to Defendant 9" 10" & 12" Plus

Stimulberg Circuit Court

David Lewis vs

vs

The Royal Marine Fire

Insurance Company

And the said Plaintiff as to this first

second, third fourth and eighth plea,

of the defendant by them above plead

and wherein they have put themselves upon the Country doth

And as to the seventh plea of the Defendant by them above plead
the Plaintiff say precludi hoc because they say that they do
not assign and transfer the said policy to the said James
M. Wright in manner and form as the defendant have
boon in that plea alleged and this they pray may be enquired
of by the Country.

And as to the ninth plea of the Defendant by them above
pleaded the plaintiff say precludi hoc because they say
that they did not make the representation and war-
ranty in manner and form as is in said ninth plea
alleged and this they pray may be enquired of by the
Country.

And for a further replication to said ninth plea by leave of
the Court first had and obtained the plaintiff say precludi
hoc because they say that at the time said representation
therein mentioned were made the sum of two thousand dollars
was raised upon said premises in said plea mentioned &
this they pray may be enquired of by the Country.

And as to the tenth plea of the defendant by
them tenthly above pleaded the plaintiff say precludi hoc

because they say that they did not represent the want of a defendant, here in that behalf alleged and this they pray may be argued of by the Country.

And for a further replication to said tenth plea by leave of the Court & the plaintiffs say precludit hoc because they say that there was attached to said premises a force pump with Rock River to put it and this they pray may be argued of by the Country.

And as to the twelfth plea of the defendant by them 12th & 13th pleaded the plaintiffs say precludit hoc because they say that they did not represent in manner and form as defendants here in that plea alleged and this they pray may be argued of by the Country.

And for a further replication to said 12th plea by leave of the Court & the plaintiffs say precludit hoc because they say that said property & premises were supplied with a good & sufficient force pump which was fed by Rock River as mentioned in said plea & this they pray may be argued of by the Country.

And as to the fifth sixth seventh and eighth pleas of the defendant by them above pleaded the plaintiffs say that they are each of them severally and respectively insufficient in law.

And for Cause of Demurrer to the thirteenth plea the plaintiffs show that the same is argumentative in nature & only to show by inference and argument the meaning & Construction of the representations therein alleged instead of positively avowing that such representation was made.

Also the said plea undertakes to state a legal conclusion instead of alleging facts. *See in 2nd of Ppatty*

Friday October 3. 1886.

David Lewis & als

vs

The Pioneers Marine & Fire
Insurance Company

Commeint

show Com on to be heard the agree
ment of Counsel on the Demurrer of
the Defendant to the 3^d 4th Counts of the Plaintiffs declaration
herein. And the Court being fully advised that the said Demurrer
and further argument being had upon the Demur-
rer of the Plaintiffs to the Defendants 3^d 6th 11th & 13th pleas herein
It is ordered by the Court that said Demurrer be sustained
as to the 3^d 6th & 11th pleas aforesaid and that it be ordered
as to the 13th plea. And on motion of Plaintiffs leave is gran-
ted them to file several Replications to the 13th plea

18

Thunneberg's Circuit Court

David Lewis and others

vs

The Pioneers Marine and Fire Insurance
Company

And the said Plaintiff as to the

Pleas of the said Defendant

by them

say preclude them

because they say that the plaintiffs do not make the
false and fraudulent representations in said plea alleged
and this they pray may be regarded of by the Country

And for a further replication to said thirteenth plea
by the leave of the Court & the Plaintiff say preclude now
because they say that it was not necessary and indispensable

to render such forcepump useful and efficient in extinguish-
ing fires, that there should be a good and substantial hose at-
tached to be used in case of fires and that such forcepump
would not be entirely useless as a force pump for such purposes
without such hose attached and that they pray may be enjoined
of by the County &c. J. M. Dwyer, Plff. Atty.

11
Date Saturday Oct 11. 1836

Daniel Lewis Joshua B
Smyth Henry O'Meslor
Clerk Strong

by

The Proria Marine & Fire
Insurance Company

Comants

Now Comes the Plaintiff by Right
& Satisfies their Attorneys and
the Defendants by Marsh & Brown their Attorneys also Come. And
issue being joined it is ordered that a jury Come and thereupon
Come a jury of good and lawful men who being empanelled
true and sworn well and truly, to try the issue joined ac-
cording to the evidence and being heard the evidence and
argument of Counsel they retire to Consider of their Verdict
and thereafter they return into Court with the following Ver-
dict to wit: That the jury find the issue for the plaintiffs and
assess their damages at the sum of two thousand one hun-
dred and twenty seven dollars: And thereupon the defen-
dants moved the Court for a new trial herein.

12

Monday October 13. 1836

Daniel Lewis Joshua B
Smyth Henry O'Meslor
Clerk Strong

by

The Proria Marine & Fire
Insurance Company

Comants

And now Comes again the parties
by their Attorneys and thereupon

the motion for a new trial heretofore made by Defendants came on to be heard and the Court having heard the argument of Counsel and being advised in the premises overrules the said motion to which decision the Defendants except and thereupon it is ordered by the Court on motion of Plaintiff Attorney that Plaintiff have judgment upon the verdict by the jury herein before found. It is therefore Considered by the Court that the Plaintiffs have and do cover of the Defendants the sum of two thousand one hundred twenty seven dollars their damages aforesaid by the jury found in form aforesaid of fees as also their Costs and Charges by them about themselves in that behalf expended and that they have execution therefor: And thereupon the Defendants pray an appeal to the Supreme Court of the State of Illinois which is granted them upon Condition that within forty days from the rising of this Court they enter into bonds to the Plaintiffs with good and sufficient sureties to be approved by the Clerk of this Court in the penalty of three thousand dollars for the prosecution of said appeal Conditions as the law directs: And in pursuance of the agreement of the parties it is ordered that the Defendants have sixty days after the rising of this Court for settling a bill of exceptions in this Cause.

13.

Know all men by these presents that we the Proria Marine and fire insurance Company as Principals and Benjamin L. Bourland as security are held and firmly bound unto David Lewis Joshua D. Smith Henry C. Mesler & Clark Strong in the penal sum of three thousand dollars lawful money of the United States, to which payment well and truly to be made and done we bind ourselves our heirs executors administrators and assigns jointly and severally, by these presents witness our hands and seals at Proria this 13 day of December A.D. 1836.

The Condition of this Obligation is this, Whereas, at the September Term of the Circuit Court of the County of St. Louis in the State of Illinois in a certain suit pending in said Court wherein the above named David Lewis Joshua D. Smith Henry C. Mesler & Clark Strong were plaintiffs and the Proria Marine and fire Insurance Company were defendants a judgment was rendered in said Court in favor of the Plaintiff for the sum of two thousand One hundred twenty seven dollars and costs of suit, from which judgment the said Defendants have prayed an appeal to the Supreme Court of said State of Illinois which has been allowed upon the said defendants filing a bond in the penalty of three thousand dollars with Benjamin L. F. Bourland of Proria as security Conditioned as the law directs

Now if the said Defendants shall duly prosecute the said appeal, and shall pay the judgment, costs in which and Damages in said suit in Case the judgment shall be affirmed in the Supreme Court then this obligation shall be void otherwise in force

L. S. Irona Mamm and Fire Insurance Compe
ny by Isaac Muleshier President
B. L. T. Bousland (Seal)

State of Illinois }
Irona County } I hereby Certify that I am personally acquain
ted with B. L. T. Bousland who signs the within bond as security
and that I am well acquainted with his circumstances and
have no doubt that he is worth more than \$2000. after the
payment of all his debts and liabilities.

Nov 13. 1886.

A. H. Poufel

In the Hennepago County Circuit Court

David Lewis

Joshua B. Smyth Henry

O. Musler & Clark Strong

vs

The Prone Mannie and

Fire Insurance Company

Of the September Term in the
year of our Lord Eighteen hun
dred & fifty six.

Be it remembered that on this sixteenth day
of the said Term being the tenth day of October A.D. 1886
this Cause came on for trial before a jury. The Plaintiffs to
sustain the issue on their part introduced in evidence a
policy of insurance in words & figures as follows:

A

" Prone Mannie Fire Insurance Company
of 2000 } For this Policy of Insurance the Prone Mannie Fire
Insurance Company in consideration of Fifty dollars to them
I & E paid by the aforesaid hereinafter named three
Capt. which is hereby acknowledged. Do Mann Lewis Smyth
Esq. & Co. Against loss or damage by fire, to the amount of
Two thousand dollars. On their Store factory building
including Machinery & fixtures said building is basement
of Stone upper Story of Wood, and is situated on Rock River
within the City of Rockford Ill. All as is described in appli-
cation and survey of 96. on file in this Office of 2000. other
Insurance. And the said Company do hereby promise and
agree to make good unto the said aforesaid their Executors
administrators and assigns all such immediate loss or
damages not exceeding in amount the sum insured on

as shall happen by fire to the property, as above specified, from the first day of June one thousand eight hundred fifty five (at 12 O'clock at noon) unto the first day of June one thousand eight hundred and fifty six (at 12 O'clock at noon) the said loss or damage to be estimated according to the true and actual Cash Value of the property at the time the same shall happen, and to be paid within sixty days after notice and proof thereof made by the assured, in conformity to the Conditions annexed to this Policy. Provides always and it is hereby declared that this Company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil Commotion, or of any military or usurped power, or any loss by theft, at or after a fire. And provides further that in case the assured shall have already any other insurances against loss by fire on the property hereby insured and not notified to this Company and mentioned in or endorsed upon this Policy, then this Insurance shall be void and of no effect and if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not give notice thereof to this Company, and have the same endorsed on this instrument, or otherwise acknowledge by them in writing, this Policy shall cease, and be of no further effect. And in case of any other insurance upon the property hereby insured whether prior or subsequent to the date of this Policy, the assured shall not in case of loss or damage be entitled to demand or recover of this Company any greater portion of the loss or damage sustained than the amount

hereby insured shall bear to the whole amount insured on said property. And it is agreed and declared, to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time after the making and during the continuance of this insurance, be appropriated applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous, extra hazardous, or included in the memorandum of special rates in the Conditions annexed to this policy, or for the purpose of storing or bonding therein any of the articles goods or merchandises, in the Conditions aforesaid denominated hazardous, extra hazardous or included in the memorandum of special rates, unless herein otherwise specially provided for hereafter agreed by this Company in writing, and added to or endorsed upon this policy then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease and be of no force or effect. And it is moreover declared, that this insurance is not intended to apply to or cover any books of account, written securities, deeds or other evidences of title to lands, mortgages, bills, notes or other evidences of debt, nor to money or bullion. And that this policy is made and accepted in reference to the Conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for.

In witness whereof, the Board of Marine & Fire Insurance Company have caused these presents to be signed by their President &

attested by their Secretary, in the City of Peoria and State of Illinois this being first day of June 1833.

Isaac Underhill President

Chas Holland Secretary."

The Peoria Marine and Fire Insurance Company Office Corner Main and Washington streets Insure buildings, Merchandise, furniture, vessels in port, and their Cargoes & against loss or damage by fire: Directors: Isaac Underhill Wm A Herron B L T. Bondland, Alt. Dyng Wm Fenn John Reynolds Charles Holland R R K Brotherton Wm Kellogg Wm E Mason John Mackenzie L Holland Philo Holland: Chas Holland, B L T. Bondland Vice President: I Underhill, President:

The Peoria Marine and Fire Insurance Company hereby Assent that the interest of Messrs Lewis Smith & Co in the within policy be assigned to Alfred Oughtree of West Bloomfield as collateral security for the payment of \$4000 secured on the within described premises:

Rockford June 19th 1833:

Alfred Oughtree agt

For value received we hereby transfer, assign and set over unto Alfred Oughtree of West Bloomfield et al and assigns all our right title and interest in this policy of Insurance and all benefit and advantages to be derived therefrom only however as collateral security for the payment of \$4000 secured on the within described premises.

Dated at Rockford this 19th day of June A.D. 1833)

Lewis Smyth & Co (Sreal)

For Value received and in Consideration of the assignment to me by Messrs Lewis Smyth & Co and their policy of the same Amount with the within I hereby reassign and retransfer to Messrs Lewis Smyth & Co all my right title and interest in this policy of Insurance and all benefit and Advantages to be derived therefrom. Witness my hand this 21st day of December A.D. 1835.

Alfred Brightlee by

Geo Wright his agent;

Conditions of Insurance referred to in the body of the foregoing policy.

1st Goods not hazardous are such as are usually kept in Dry Goods Stores, including Coffee Flour household furniture & Linen. Indigo. Rice. Spices. Sugar Teas, and other articles not Combustible.

2nd The following trades and occupations, goods, wares and merchandises, are denominated hazardous. Viz Alchahol Basket Sellers. Basket makers. Sticks Cabinet furniture. China earthen or slip ware, or Plate Glass in boxes crates, or casks. Copper plate Printers. Cotton in bales. Hat finishers (without use of fire, except for heating their irons) Hardware and Cutlery. Jewellers. Stock. Liquor in glass unpacked. Looking glasses in boxes. Manila Grass in bales. Paints ground in oil. Paper hangings. Porters houses. Potash. Pocket book makers. Stock Printers of newspapers, rags in packages. Sail makers.

Ship Chancellers, Spuntion Liquors, Sugar Makes, Stationers, stock
Sawp makes, Thrashed Grain, Tin or sheet iron workers, Varnishing
houses, watch makes stock and tools, wine in glass, in pack
ages Window or Plate Glass in packages

3. The following trades and occupations, goods, wares and mer-
chandize are denominated extra hazardous viz: Basket ma-
kers, Straw bleachers, Booksellers stock, Blacksmiths, Boat Build-
ers, Boat founders, China, Earthen or Glass ware, on looking glass
is unpacked, Confectioners stock, Cotton unpacked, Cooper, Cop-
per smiths, Druggists and apothecaries, fur dressers, Glass in bulk
Tinsmiths, Gun makes or smiths, Grate makes, Hay pressed
in bundles, Hemp in bulk, Ink makes, Lamp Manufactu-
res, Lamp sellers stock, Lithographers, Milliners Stock, Morocco
Manufactures, Optical and Mathematical Instrument Ma-
kers, Painters stock, Perfumers Stock, Phosphorus, Pictures and
Prints, Printers of books and Jobbing, Plates and Plate ware
Manufactories, Pocket book makes, Plumbers and Platers,
Saltpetre, Silversmiths, Stables (private) Spints of Turpentine
Stove manufacturers, Tobacco Manufacturers, Toy Keepers stock
Type or Stereotype manufacturers Varnish, Window and plate
Glass unpacked

Wine Bakers, Bark mills, Blinds makes, Brewers, Book Bind-
ers, Blacksmiths, Boat Builders, Cabinet Makes, Carpen-
ters Joiners, Chair or Coach makes, work shops, chemists
Cotton Mills, Dyers, Forgers, Ironers, Frame Makes, Trimmers
Tumbling mills, Grist mills, Hat manufactories, House
building or repairing, Ink or Iron black or lamp black
manufactories, Living Stables, Lumber or Mahogany yards

Malt houses, Metal and other mills of all kind, Musical
Instruments makers, Oil makers Pump & Block makers shops
Paper mills, Refractories, Ship Builders, stock in the yards
ships or other vessels in port, or their Cargoes, or when build-
ing or repairing Steam Engines or Boats, Sugar refineries, Tar-
naris, Tallow mills, or Chandlers, Timber Yards, Woolen Mills
and generally all manufacturing establishment, and all
trades requiring the use of fire heat or steam power, not
before mentioned enumerated, will be insured at special
rates of premium. The following are not to be insured
at any rate of premium viz. Print works, Distilleries, Glass
mills, Gunpowder, Oil boiling house, Oakum factories,
Panoramas, or other Scenic Paintings, Patent Leather manu-
factories, Sap or ash and kind factories, snuff mills, Steam
Planing mills, Tar boiling houses, Theaters, Turpentine Man-
ufactories Varnish makers.

Application for insurance must specify the construction and
materials of the building to be insured, or containing the prop-
erty to be insured, by whom occupied whether as a private
dwelling or how otherwise, its situation with respect to con-
jugal buildings, and their construction and materials
whether any manufactory is carried on within or about
it, and in case goods and merchandise, whether or not
they are of the description denominated hazardous, extra
hazardous, or included in the memorandum of special
rates: And a false description by the assured of a build-
ing or its contents, or the omission to make known
any fact material to the risk, or in a valued policy

and over valuation, shall render absolutely void a policy issued upon such description or valuation: But the Office will be responsible for the accuracy of surveys and valuations made by its agents: If after insurance is effected either by the original policy or by the renewal thereof, the risk be increased by any means within the Control of the assured occasioned in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void and of no effect: If during the insurance any subsequent insurance should be made upon the property hereby insured or the risk be increased by the erection of buildings or by the use or occupation of neighboring premises, or otherwise, or if for any Cause the Company shall so elect, it shall be optional with the Company to Cancel this policy, in which case the Company will refund the premium for the unexpired time.

5th No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium:

6th Goods held in trust, or in Commission can 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: ~~And~~ Goods in Storage must be separately & specially insured.

7th 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 therefore

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

8th This Company will not be liable for damage to property by lightning, and from fire, nor for damage occasioned by the explosion of a steam boiler, nor for damage by fire resulting from such explosion unless otherwise expressly provided: The keeping of gunpowder for sale or storage, upon or within premises insured, or the lighting the same by Camphene or spirit gas without written permission in the policy, shall render it void: and this Company will not be liable for any loss caused by the gross wanton misconduct or culpable negligence of the assured, or by means of his intoxication:-

9 Jewels, watches, plate, musical instruments, paintings, Statuary, sculptures and Curiosities are not deemed to be included in any insurance unless an inventory thereof accompanying the application for insurance or is inserted in the policy.

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

11th All persons insured by this Company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the Company or its agent, and as soon after as possible to deliver in a particular account of such loss or damage, signed

with their own hands and verified by their Oath or affirmation: they shall also declare on oath whether any, what other insurance has been made on the same property: what was the whole Value of the subject insured: what was their interest therein: in what general manner (as to trade, manufactory, merchandise or otherwise) the building insured or containing the subject insured and the several parts thereof were occupied at the time of the loss, and who were the occupants of such building: and when and how the fire originated, so far as they know and believe, and procure a Certificate under the hand of a magistrate or Notary Public (most contiguous to the place of fire and not concerned in the loss as a creditor or otherwise or related to the insured or sufferer) that he is acquainted with the Character and Circumstances of the person or persons insured, and has made diligent enquiry into the facts set forth in their Statement, and knows or verily believes that he or they really and by misfortune, and without fraud or evil practice, hath or have sustained, by such fire, loss and damage to the amount therein mentioned, and also if required shall produce their books of account and other proper vouchers, and shall also, if required submit to an examination under oath, by the agent or attorney of the Company and answer all questions touching his, her or their knowledge of anything relating to such loss or damage or to their Claim thereupon, and subscribe such examination, the same being reduced to writing: and until such proof, declarations and Certificates are produced, and examination if required the loss shall not be deemed

payable: Also if there appears any fraud or false swearing the insured shall forfeit all claim under this policy: Damages to buildings not totally destroyed shall be appraised by disinterested men mutually agreed upon by the assured and the Office or its agents, and 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 kind, and shall cause a list or inventory of the whole to be made naming the quantity and cost of each kind: the damages shall then be ascertained by the examination and appraisal of said damages on each article by disinterested appraisers mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the Claimant, one half of the appraisers fees to be paid by the insured: A copy of the written portion of the policy to be given in the affidavit of the Claimant in all Cases.

- 12 Payment of loss shall be made in sixty days after sufficient proof has been received by the Secretary in writing, and in Case differences shall arise touching any loss or damage to the property insured it shall be optional with the Company to replace the articles lost or damaged with others of the same kind and equal goodness, and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do within thirty days after the preliminary proof shall have been received at the Office of the Company: And if.

no notice is received by the Company of a loss within sixty days after it occurs, it shall be optional with the Company to reject or allow the Claim or any part thereof.

- 13 Insurance Once made may be Continued for such further term as may be agreed on, the premium thereon being paid and a renewal receipt being given for the same. And it shall be Considered as Continued under the original representation in so far as it may be not be varied by a new representation in writing, which in all Cases it shall be incumbent on the party insured to make, when the risk has been changed either within itself or by the surrounding or adjacent buildings.
- 14 When a policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy, and warranty on the part of the assured.
- 15 When property insured by this Company is damaged by removal from a building in which it is exposed to fire said damage shall be borne by the insured and the insurers in such proportion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the Claimant.
- 16 The Company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or deviation from the laws or regulations of police made to prevent accidents by fire, in places where laws and regulations on the subject exist.

17 This further more hereby expressly provides, that no suit or action against said Company, for the recovery of any claim upon under or by virtue of 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.

Enclosure

"Fire Policy No 96: From Manufacturers Insurance Company
Providence: Messrs Lewis Smyth & Co Rockford Ills
Amt Insured 2000

Rate per cent 40-

Policy 1

Sum Insured

Expires 1st June 1836.

Chas Shedd Esq Agent

Which was read into the jury: The Plaintiff then introduced as a witness Chas Shedd who testified that he was acting as agent of the defendants in procuring the policy & was agent at the time of the burning of the buildings mentioned in the policy & has continued so to the present time: Knows the property insured it was a starch factory situated in Rockford on the west side of Rock River was present at the fire on the 14th July 1835. The

property was pretty much destroyed by the fire: I have seen
the paper produced marked B. it was served on him (Loring)
July 16, 1833. The endorsement is in my hand writing: it
was handed to me by Mr Ought: I have seen the paper pro-
duced marked C. It was shown to before me July 18, 1833.
Plaintiff Smith Strong & Mesler came to my Office left the
papers & think I sent them by Mail to the Secretary of the
Company know the hand writing on the back to be the Hol-
land Secretary of the Company: The Plaintiff has offered in
evidence two notices in words & figures as follows here

B To the Kona's Manni & Keri

Insured Company: You will please to take notice that
the Starch Factory in this place insured by you by your policy
dated June 1st 1833: and numbered 96. to Messrs Lewis Smyth & Co
for \$2000. was on the 14th inst^y totally destroyed by fire July
16, 1833 Rockford

To C W Sheldon Agent
of said Co

Yours &c

Alfred Oughtree

Assignee of said Policy

by James W Ought his

agent who also signs for the parties
insured:

Enclosed: "I Acknowledge service of the within

C W Sheldon Esq July 16, 1833,

C

Rockford July 18th 1833

The undersigned depose and oath, that on the fourteenth
instant their Starch Factory was burned with nearly all

its Contents:

That the origin of the fire is to them unknown with certainty - but think it originated in some undiscovered defect in the Chimney: That the Factory was at the time of the fire, and at all times in their Occupancy and under their immediate Care: That the Factory Building and Machinery fixtures Cost the sum of Two thousand and three hundred dollars, and that it was owned wholly by them: That they are insured by the Fireport Mutual Fire Insurance Company in the sum of Two thousand dollars, and have no other Insurance excepting yours: That their Actual loss on Factory and Machinery is Six thousand eight hundred and thirteen dollars: The further depose and say that the above facts as stated by us are true to the best of our knowledge and belief

Subscribed and sworn

to before me this 18th

day of July A.D. 1835

C. W. Shedd for Peter (Deaf)

David Lewis

J. B. Smith

H. C. Meslon

Clark Strong

which were objected to by defendants. And the Court overruling the objections the defendants excepted & the papers were read to the jury: The paper purporting to be a notice dated Oct 24. 1835 is signed by the parties plaintiff; know Strong & Lewis hand writing & believe the signatures theirs: don't know Meslon so well don't know Smith: Mr Underhill President of the Company was here soon after the fire went with me to the Factory: Holland was also here in August I think the Company had had notice of the fire then: He claimed that the Defendants were not liable because there

was a variance in the plaintiff application in respect to the Policy of the Stephenson County Insurance & because there was no hose attached to the pump in the premises insured at the time of the fire. The Plaintiff were present. On cross examination the witness stated that at the same time Holland proposed to submit the question of the Defendant liability to Judge Nelson. Learned from the statements of the Plaintiff that they had received notice from the defendants that their (the plaintiff) notice of the loss was not sufficient.

Know the hand writing of the paper produced (marked D.) to be Mr Hollands the Secretary of the Company. The Ponca Mammie Insurance Company have seen him write. Don't know when plaintiff stated that Deft had notified them that notice was on file insufficient or when Plaintiff received such notice.

James L. Marlow a witness for Plaintiff testified that he saw the building soon after the fire the wood part was all destroyed - was acting justice of the peace at the time. The papers produced (marked E. & F.) are the same made out at the time they were made out as they now appear. The Plaintiff here offered in evidence the papers marked D. E. & F. (

E

Rockford Ill October 28, 1853.

17

The Ponca Fire and Marine Ins Co

Sir Yours of the 15 inst is received. In this you inform us that our proofs of loss by fire on the 14th of July last are deemed incomplete &c Below

we trust all deficiencies will be made up.

Our Starch Factory insured by you, was burned on the 11th of July last, and was a total loss excepting the walls of the lower room which were of stone and somewhat injured, and the iron of the Machinery much of which was rendered useless and all injured more or less.

18 The Cost of the building and Machinery was \$9768.⁰⁰
The actual loss was at least \$8218.⁰⁰. It was in our own occupancy and used for making starch. The lower rooms were used for steeping Corn in water, and for starch Vats. filled with water excepting the small spaces forming the basement of the Stove room and wheel pit. The 2nd Story contained our machinery room upper part of Stove room, finishing room and office. The Attic contained dry Corn. We had insured on our Starch Factory in the Stephenson County Mutual Ins Co \$2000. (By the term "Starch Factory" used above we understand it to include the building and fixed machinery. It was so understood at the time of the application by their and your agent so declared by him at the time and still so declared.) As to the Cause of the fire we can only say conjectures being in no doubt about it. We know of no want of care or prudence but we do know that the fireman and others were at their posts. so rapid was the fire, the wind being high, that we had no time to save scarcely anything. Even the money and valuable papers and other articles in the Office drawer were lost although remote from the fire at first. Not more than two or three minutes elapsed after the fire was first seen, before all was consumed.

out by smoke and heat. Consequently there was no time to use the abundant supply of water on the floor of the room where the fire was first seen. Our force pump happened to be in motion at the time but the smoke and gas almost instantly compelled all hands to flee. We may add that we lost a large amount of stock on which we had no insurance. If you find any ambiguity or omission in the foregoing we will explain further on being informed or desired by you so to do so.

David Lewis

J B Smith

H C Meslor

Clark Strong

19
When we sent our amount of loss in our former communication, we were not so well prepared to make them definite as now, which may account for some little varying of figures.

David Lewis

J B Smith

H C Meslor

Clark Strong

Sworn & subscribed before me
this 26th day of October A.D. 1833
J. G. Mantov

State of Illinois

De Witt County, ss I James G. Mantov a Justice of the Peace in the City of Rockford in & for said County in said State, do hereby certify that I reside a short distance from the said Starch Factory which was consumed by fire, that I am not concerned in the loss by said fire as a creditor or otherwise, that I am not related to the insured or sufferers by said fire, that I am acquainted

with the Character and Circumstances of the persons insured
that I have made diligent enquiry into the facts set forth in
their Statement and truly believe that they really and by no
fortune and without fraud or evil practice have sustained
by such fire loss and damage to the Amount therein men-
tioned and that any discrepancy if any between the amount
and facts set forth in this statement and any former
statement arise only from the facts that under the Circum-
stances it has been difficult to give precise Amounts
Given under my hand this 26th day of October A.D. 1855.

James S. Manlove Justice of the Peace.

D

Capital
\$100,000

Office Prona Marine Fire Insurance

Company.

Prona Ill Oct 15th 1855.

Messrs Lewis Smyth & Co

20
Your Letter of the 9th inst is before me in
answer say I have been waiting for a proposition for set-
tlement and the perfecting of proof from you or some
other Communication relative to the matter and our
board on examining your proof declare
them insufficient and certainly judging from those we
decline paying the loss but we are unwilling you
should have the privilege of making your proof complete
and on examining them twice at once advise you
of our determination

Very Respectfully

Attest and Seal

J. S. Sec art 11 in Policy E

J.

I James H. Manlove a Justice of the Peace in & for the County of
Kankakee and State of Illinois do hereby Certify that I have
made due enquiry into the Cause and origin of the fire by
which the Starch Factory of Lewis Smyth & Co of the City of Rock-
ford County and State aforesaid was destroyed also as to
the property destroyed that I am acquainted with the Char-
acter and Circumstances of the person ^{consuming} occupying the said
Starch Factory Company the persons insured, and do ver-
ily believe that this really by misfortune, and without
fraud or evil practice has sustained by such fire, loss and
damages to the Amount stated and sworn to, in their State-
ment of July 18. 1833 before C. W. Sheldon Esq: and I also fur-
ther verily believe that said statement in all its details
is just and true: I have under my hand and seal at
my Office in the City of Rockford in the County and State
aforesaid this 19th day of July A.D. 1833.

James H. Manlove, J.S.

Justice of the Peace

which were objected to by defendants & the Court overruled
the objections & the papers were read to the jury

S. W. Church, a witness for Plaintiff testifies that he was present
at the fire. The premises were in possession of Lewis Smyth &
Muslor & used for a starch Factory. The lower story was
stone walls & the upper wood. Was there nearly every day

before and after the fire - was well acquainted with the premises. All the wood part of the building & Machinery was totally destroyed by the fire. A large part of the machinery was saved & not entirely destroyed, though much injured by the heat & by being bent or broken - The fire continued to burn several days - A large part of the iron machinery has been used in the new factory - Has had considerable experience in Machinery knows its value. Besides the machinery there were about 35 large Vats destroyed worth about \$50 each. Thinks the value of the building independent of the fixtures about \$8. to \$10,000 the wood part worth \$3. to \$4,000 - The whole property before the fire was worth about \$12 to \$13,000, after about \$6. to \$8,000. The factory has been rebuilt on the same ground but upon a different plan. Much of the iron Machinery has been repaired & used in the new factory - The attic of the old factory had no machinery in it - It was used for storing or keeping Corn in it - was 12 to 1500 bushels of Corn there a few days before the fire. A large quantity of grain fell down among the timbers & machinery at the fire & continued to burn several days was at the fire soon after it was discovered: it was impossible to extinguish it.

Orlando B. Clark witness for plaintiff testifies that he was engaged in the foundry & machine business his shop with in 200 feet of the plaintiffs factory destroyed. He made most of Plaintiffs iron machinery. Considerable of the Machinery was repaired & used in the new factory, worth about half its original value exclusive of the cost of repairing & refitting - Much of it was entirely ruined - Am a practical

Mechanic and was acquainted with the value of the property insured before the fire. Heard the estimate of value by writing Chink & agrees with him. The cost of the Machinery furnished by Thibault for the factory burnt was between \$15.00 & \$1800.

H.B. Boston a witness for Plaintiff testified that he was at the fire was at work in the building when the fire was first discovered it was seen first in the Dry Kiln & on first discovery it burst out of the dry kiln with such force that it was impossible to get at it so as to extinguish it. There was a force Pump fed from the sea which supplied the wheels - the pump was worked by the water wheel & was always in motion when the wheel was. There was no hose attached to the pump to pump water to other parts of the building. The force pump was supplied from the sea & discharged the water into a reservoir which was on the main floor above the basement. Held 40 to 50 barrels. There was another pump with three inch bore neither pump had any hose attached to it.

William McInnis testified that he was a millwright & worked in the Starch factory putting up the machinery. The cost of putting it up was about \$1000.

Alexander Ferguson testified that he was present at the fire was at work in the factory. Heard the first alarm & tried to get at the place of the fire. Spread so rapidly with such violence that we could do nothing - Could not get things out of any part of the building did not get all of the goods out.
On the part of the Defendants:-

4.

On

on Machining all fixtures

Or

Or

Total

All situated in the City of Rockford in the County of Winnebago State of Ills on Rock River

1. Property for Insurance - What

amount is there now insured on the property?

Two thousand dollars

Is there any encumbrance on the property? If so to what amount?

Seventeen hundred thirty dollars

Is it insured by holder of incumbrance?

Payable in two installments for less

2. Building: - Is it Stone, brick or wood?

Basement Stone 2^d Story wood

In what Condition - How many

Stories high - what size? For what

Manufacture of starch

purpose is it used? How many tenants?

3. Walls Division. Are they brick or

stone - how thick - do they rise above the roof?

stone

Are there openings through them

into other buildings if so how many?

stone

4. Roof. What is it covered with? Is there a scuttle and stairs to it?

In part felt the remainder wood with scuttle

5. Stairs. Do all stand on suitable brick

or stone hearths, or on metallic substance? They do

6. Pipes: Are they at a safe distance from

the wood if not is the wood well guarded

by crocks, or metallic substance?

All well guarded

7. Chimneys. Are they built from the ground

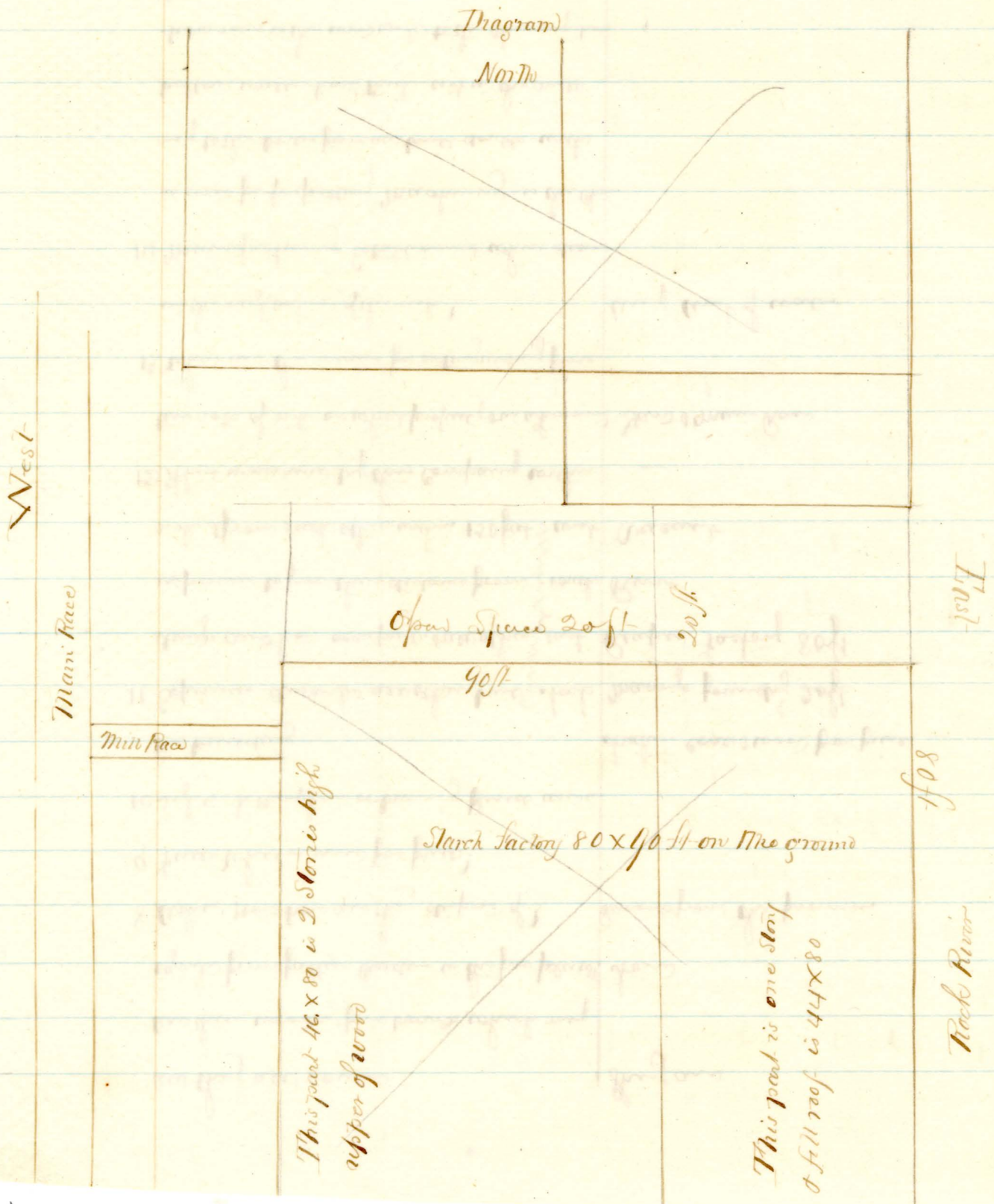
- are they all sound They are
- are there wooden fire boards which may
ignite from fallen timber in the fire place? None
- 8 Ashes! How are they disposed of? Removed from the premises
- 9 Fuel What is used for fuel?
- 10 Lights. Is Camphine or burning fluid used in
the building kerosine. Coal wood for fire
- 11 Exposures describe all other buildings Manny's foundry 20ft
dumps and how occupied. all other cash Reapers Factory 80ft
exposures to fire their distances from each River
risk, & from each other, within 150 feet west Veccant
- 12 What insurance by this Company within
ten rods of risk on what property and whose name? Yard & Main Race
- 13 What are the means for extinguishing fires
in the neighborhood of the risk? Any amt of water
- 14 Manufacturing Establishment where steam
is used for propelling Machinery is the chim-
ney to the boiler furnace built double with
hollow wall how thick is it in the mill
how near is the wood work to the chimney how
thick are the walls to the furnace how far
from wood work does it run day and night
is water convenient? the steam
- 15 Mill How many runs of Stone what kind
of Smith machine and in what part of the mill there is a force pump and and Rock
dumps is there forcing pumps and a good supply River to feed it
of water always on hand?

16 Is there a watch kept constantly about? There is a man at all times in the building!

I hereby declare that the above questions are correctly answered.

Lewis Smith & Co Applicants

Art 3. Make a diagram or chart of Buildings or Buildings to be insured or containing goods to be insured, with the surrounding buildings. State for what purpose occupied, also of what Material made. Showing distances names & width of Streets, and nearest Cross Streets or alleys



Diagram

North

Starch factory chimney

House

Open Space 20 ft

90 ft

20 ft

Shed

Indusac

Shed built 46. x 80 = 51 stories high

Motor of wood

Starch factory 80 x 90 ft. on the ground

Shed built is one story
open roof is 44. x 80

East Rock River

Main River

Enclosed: Application, No 96. Rockford Marine Fire Insurance
Company: Application of Messrs Lewis Smith & Co: Term One
year commencing June 1, 1853. Expires June 1, 1854. Amount Ins
\$2000. Rate per Cent Two: Cash Premium \$40.00. Policy and
Survey Fee \$ - Messrs Lewis Smith & Co
C.B. Sheldon Agt.

No
The Rockford County Mutual Fire Insurance Company
\$655 - Protection \$2000
Stock and ~~and~~ Mutual

By this Policy of Insurance, Given in Consideration of
premium and 20 per dollar Cash premium in hand paid
and a premium total of two hundred and forty dollars by the
said Company received. Do insure Messrs Lewis Smith & Co of
Rockford in the County of Kanebago and State of Illinois
against loss or damage by fire to the amount of Two thousand
dollars, on the following property: On their Starch Manufactory
\$2000. For a more particular description, and as forming part
of this policy, by which the insured will be bound, reference being
had to application and survey No 655, on file in this Office.
And the said Company 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, during the term of one year from the 1st day of May
One thousand eight hundred and fifty four at 12 O'clock

at noon into the 9th day of May one thousand eight hundred and fifty six at twelve o'clock at noon. The said loss or damage to be estimated according to the true or actual value of said property at the time the same shall happen, and to be paid within thirty days after due notice and proof thereof made by the insured in conformity to the Conditions annexed to this policy. But the said insured shall not be entitled to recover, by virtue of this Policy, more than two thirds the actual value of any building or buildings or any other property at the time it is destroyed. Provided always and it is hereby declared that this Company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion or of any military or usurped power, nor for any loss by the pulling down or blowing up of any building, nor for loss or personal property not burned but stolen or mislaid; and provided further that in case the insured shall have already any other insurance against loss by fire, on ^{the} property hereby insured, not notified to this Company according to the annexed Conditions, then this Insurance shall be void and of no effect. And if the said insured or their assigns shall hereafter make any other Insurance on the same property, and shall not with all reasonable diligence give notice thereof to the Secretary, and have the same endorsed on this instrument or otherwise acknowledged by the Company in writing, this policy shall cease and be of no further effect. And in all cases of other insurance upon the property hereby insured, whether prior or subsequent to the date of this

Policy, in Case of loss or damage by fire, the insured shall not 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 said property: And it is further agreed that in Case the above premises shall at any time after the making and during the time this Policy would otherwise continue in force be so altered or be appropriated, applied or used, to or for the purpose of carrying on or exercising therein any trade, business or vocation which, by any means whatever would increase the hazard unless it be by the Consent and agreement in writing, of this Company, added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, This Policy shall cease and be of no force or effect: And it is also agreed, that this insurance is not to apply to or Cover jewels, plate, plate ware, medals, pictures, family paintings, sculpture, statuary, or musical instrument unless an inventory of the same be made in the application for insurance, or attached thereto: And it is also agreed that this policy is made and accepted subject to and in reference to the Terms and Conditions hereto annexed, and the Charter and by Laws of said Company, which are to be used and resorted to, to explain or ascertain the right and obligations of the parties hereto, in all Cases not herein otherwise provided for: And it is expressly stipulated and agreed that this policy or any claim arising therefrom in consequence of loss or damage by fire, shall not be assigned or transferred in any manner whatever either in whole or in part, after such loss or

damages shall have occurred: and that any sale, transfer or assignment of this policy, or such claim, either in whole or in part, shall be deemed and taken as absolute proof of fraud on the part of the insured, or holder of the policy, and all other persons claiming by virtue thereof, and shall be an absolute bar to such claim in all Courts of law or equity whenever and wherever the same or any part thereof may sought to be enforced and the said Company shall thereupon become wholly absolute from any liability to the insured or claimant, his or their heirs, executors, administrators or assigns. The interest of the insured in this policy is not assignable unless the assignee, before any loss happens, shall give notice in writing of the assignment in pursuance of the By laws of this Company, and have the same endorsed on or annexed to this Policy, within thirty days after the sale of the property, or this policy becomes void: And in Case of any transfer or termination of the interest of the insured, or any part of his interest in the property hereby insured, either by sale, contract or otherwise, or in Case any incumbrance by mortgage or otherwise shall fail or be exacted thereon, without such Consent, this policy shall from thenceforth be void and of no effect. In witness whereof, the President of said Company hath hereunto subscribed his name, and caused the same to be attested by their Secretary, in Freeport Illinois, this 11th day of May 1833.

George Burrinton President

L. L. Mann:—

The Stinchon County Mutual Fire Insurance Company

Office Freeport Illinois: Directors: E. H. Hyde, Geo. Burinton,
S. D. Knight, John Black, Chas. Powell, J. A. W. Donihoe, W. D. Fisher,
Loyal L. Munn. J. K. Brewster, Officers: Geo. Burinton President,
John Black Vice President, Loyal L. Munn Secretary, John K.
Brewster Treasurer

The Stephenson County Mutual Fire Insurance Company here
by Consent that the interest of Mifs. Lewis Smyth & Co. in the
within Policy be assigned as collateral security for the pay-
ment of \$4000. secured on the within described premises to
Alfred Ogbletree of West Bloomfield & J.

Freeport Illinois June 19. 1835.

L. L. Munn Secretary
for Alfred Ogbletree & J.

For value received we hereby transfer assign and set over unto
Alfred Ogbletree of West Bloomfield & J. as collateral security,
however for the payment of \$4000 secured on the within de-
scribed premises and assign all our right, title and in-
terest in this Policy of Insurance, and all benefits to be de-
rived therefrom: Witness our hands and seals this thirtieth
day of June A.D. 1835. Sealed and delivered in presence of
O. Sheldon as to Mr. Lewis.

David Lewis

J. B. Smyth

H. C. Meslon

Clark Strong

Note - assignments must be made within thirty days after
the sale of the property, or the policy is void: The assignees

shoes be made and the Policy sent to the Office for the
Consent of the Company, and fifty cents recording fee, and
new premium note signed by the assignee, or a written agree-
ment to be responsible for the old note must be sent with the
Policy; Consent will then be given to the assignment.

For value received and in Consideration that Messrs Lewis
Smyth & Co have assigned to me another Policy of Insurance
of an equal amount with the within, I hereby assign and
retransfer to them all my right title and interest in this
Policy of Insurance and all benefits to be derived therefrom
witness my hand this 21. day of December 1853.

Alfred Oughltrie by

Jas W. Wright his agent.

Conditions of Insurance.

- 1 All applications for insurance must be in writing according
to the printed forms of the Company and specify the Construc-
tion and materials of the building to be insured, or con-
taining 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 manufactory is carried
on within or about it; and including every fact and cir-
cumstances that can affect the risk or hazard of the prop-
erty within eight rods; and all facts in relation to the
ownership of the premises, incumbrances of any and every
kind thereon; and the amount, if any already insured on

the property

2. If after insurance is effected upon any building or goods, in this Office, or the renewal thereof, the risk shall be increased by any means whatsoever or if other or additional kinds of goods are kept not specified in the written portions of this policy, or if other or additional tenants or occupants are admitted in the building, or other or additional trades, business, or occupations carried on therein, or if such building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void, and of no effect unless, before any loss happens, the same shall be approved in writing by the Secretary of the Company.
3. If during the insurance the risk shall be increased by the erection of any building or buildings within eight rods, or by the use or occupation of neighboring premises or otherwise, whether with or without the assent of the assured, and such erection, alterations or increased hazard shall not be approved in writing by the Secretary before any loss shall happen, then and in that case this policy shall be void and of no effect. This policy may at any time be cancelled by any agent or director for any cause satisfactory to such Agent or Director of the Company.
4. A false description, by the assured of any building or of its contents, or of the valuation thereof, or in a valued policy an over valuation shall be deemed a fraud upon the insurers and shall render absolutely void any policy issued upon such description or valuation. For the

filling up of all applications including all statements made therein and all material omissions. the agent shall be taken and deemed to be the agent of the applicant, or of the assured, or of any assignee of this policy.

5. The Insurance, whether original or Continues, shall be Considered as binding until the actual payment of the cash premium. The Acknowledgment of the payment of the Cash premium on the face of the policy shall not be deemed conclusive evidence of such payment. A promissory note given for such premium shall not be deemed the actual payment of the premium. The insured shall show, in his preliminary proofs of any loss, that such Cash premium was actually and duly paid before such loss, and either party shall be obliged to prove or disprove such payment in any suit brought against the insurers.

6. Property held in trust, or on Commission, must be insured as such, otherwise the policy will not Cover such property even 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.

7. In Case the property insured shall be exposed to loss by fire, or damage shall come to said property by removing it from the buildings, the insured shall not be entitled to demand more Cover of the insurers any larger proportion of such loss or damage than the amount insured thereon in this policy shall bear to the whole value of the property insured and at risk at the time of the fire. The insurers shall not be bound

by virtue of this policy, to pay to the insured any more than two thirds the Cash value of any building, exclusive of the Cellar or basement and any other property that would be Consumed

8 This Company will be liable for fire by lightning, but not for damage occasioned by the explosion of a steam boiler: nor damage accruing from fire in consequence thereof: the keeping of gunpowder for sale or on storage upon or in the premises insured, or the lighting of the same, by Campfire or spirit lamp, burning fluid, or other inflammable substance or the keeping of matches in or about the premises without being secured in stone or earthen jars, or metallic safes, without the written permission of the Secretary, shall render the policy void. The Company will not be liable for property stolen nor for any injury loss or spoilation of the property insured after it is removed from the building where it was insured.

9. All persons insured by this Company, and sustaining loss or damage by fire are forthwith to give notice thereof to the Company, and within thirty days after the loss, deliver to the Secretary a particular account of such loss or damage, naming each article and the Cash value thereof at the time of the fire, signed with their own hands and verified by their oath or affirmation, and also if required, by their books of account and other proper vouchers and permit extracts, and copies to be made. They shall also declare on oath whether any and what other insurance has been made on the same property: what was the whole value of the subject insured: what was their interest therein: in what general manner

(as to trade, manufactory, Merchandise, or otherwise) the building insured, or containing the subject insured, and several parts thereof, was occupied at the time of the loss, and who were the occupants of such buildings, and when and how the fire originated, so far as they know or believe: They shall also procure a Certificate under the hand of a magistrate or notary public (most contiguous to the place of the fire and not concerned in the loss as a creditor, or otherwise, or related to the insured or sufferers) that he has made due enquiry into the Cause and origin of the fire, and also as to the property destroyed, and is acquainted with the Character and Circumstances of the person or persons insured and does know or verily believe that he, she or they, really, and by misfortune and without fraud or evil practice have or hath sustained by such fire, loss and damages to the amount therein mentioned, and shall also, if required, submit to an examination, under oath, by the agent or Attorney of the Company and answer all questions touching his her or their knowledge of any thing relating to such loss or damages, or to their claim therefor, and subscribe such examination, the same being reduced to writing: and unless such proofs, declarations and Certificates are produced, and examination if required the loss shall not be deemed payable: and any misrepresentation or Concealment, or fraud, or false swearing in any statement of an affidavit in relation to said loss or damages, shall forfeit all claim by virtue of this policy, and shall be a full bar to all remedies upon the same. Where 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: and shall cause a list or inventory of the damaged articles to be made naming the quantity and cost and damage to each kind. The damage shall then be ascertained by the examination and appraisal of each article by disinterested appraisers mutually agreed upon: A copy of the written portion of the Policy to be given in the affidavit of the Claimant, including the printed headings of the policy, and also a copy of any and all assignments of the policy and the Consent thereto by the secretary together with any written Consent and approval of Alterations, changes of Hazard other insurances, and the Consent and approval, by the Secretary, of all other insurances on the same property, and their several amounts.

- 10 Losses shall be payable at this Office in thirty days after the proof thereof, amended and completed, shall have been filed in this Office, in Compliance with the provisions of section 9 of these Conditions, and where the insurance is by premium note the Company may, at its option retain as security the amount of such note, or any portion thereof. In all cases where a policy is held as Collateral security the insured shall not be entitled to demand or recover any part of the amount insured, until he, she or they, shall have enforced and collected such portion of the debt as can be collected out of the primary security to which this policy is collateral: and this Company shall be liable to the assignee for a sum only equal to such balance of said debt, not exceeding

the amount insured, as cannot be collected out of said premises or security: neither the assured in this policy, nor any assignee thereof, shall be entitled to demand or recover of the insurers, in any Court of law or Chancery any damages for loss by fire to the property herein insured, unless such assured or assignee shall previous to or at the time of the fire, have or hold a bona fide insurable interest in the property insured either by ownership mortgage or judgment amounting to a lien upon the property and in no case any larger sum than such bona fide interest any thing written in or endorsed upon this policy to the contrary notwithstanding.

11. In case of any loss or damage to the property insured it shall be optional with the Company to replace the article lost or damaged with others of the same kind and equal goodness and to build or repair the buildings or buildings within a reasonable time, giving notice of their intention so to do within thirty days after having received the preliminary proofs of the loss required by the ninth article of these Conditions: there shall be no abandonment of the subject insured to the insurers.
12. 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 six 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 six 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.

13. It is hereby specially agreed that the insurer shall not be responsible or answerable for any loss or damage occasioned by the use of fires in buildings unprovided with good and substantial stone or brick chimneys, nor if stove pipe holes are left open nor if there be cracks or defects in the chimneys, nor if broken or defective stove pipes is used, nor if the joints are not mortised together or otherwise secured so that they cannot separate nor if the stove pipes be not secured from wood work by stone, earthen or metallic tubes or plates or by masonry work, nor if stove pipes pass out through the roof or side of any building unless noted on the application, or consent, endorsed hereon by the secretary, nor if fireboards are used and not lined inside with zinc or other metal, nor if stoves are used without standing upon stone, brick, zinc or other metal, nor if ashes are kept in wooden vessels in or about the buildings, nor if soot or cinder is suffered to accumulate in any stove pipe or chimney, so as to expose the property to fire therefrom, nor if the building or buildings are vacated or dilapidated, nor if there be any neglect or deviations from any municipal laws or regulations made to prevent the origin of or accident by fires where such laws and regulations exist. The assured shall be held responsible for the conduct of any tenants of the premises, or of any employee, in regard to all matters treated of in this section the same as if transacted by himself.
- 14 In cases of fire, or of loss or damage thereby, or of exposure

to loss or damage thereby, it shall be the duty of the insured to use all possible diligence in saving and preserving the property. And if they fail so to do this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect.

15. When a policy is made and issued upon a survey, description and valuation of certain property, such survey description and valuation shall be taken and deemed to be a part and portion of such policy, and warranty on the part of the assured, whether he signs the application or not.

16. It is hereby expressly agreed and understood that the assured in this policy, or any assignee thereof, shall not be entitled to demand or recover of the insurers by virtue of this policy, any more than two thirds the Cash Value of any building (exclusive of the cellar) or other property, as specified and itemized in this policy, and at risk at the time the fire shall happen to the same nor any larger sum than shall, together with all other insurances thereon, amount to a sum equal to two thirds the Cash Value of either kind of property as specified and itemized in this policy, nor more than such proportion of such loss on each kind of property as the whole amount of insurances thereon shall bear to the whole value of the property insured and at risk at the time the fire shall happen: The insurers may at their option compute the whole amount of property at risk at the time of the fire, at the appraisal set forth in the application.

18. In default of the payment of any assignment which may be made upon the premium note of the insured, or in case of the assignee

of the policy upon the premium note of the assignee within thirty days after notice shall have been given to the insured of such assignment either personally or by depositing such notice in some post Office addressed to the insured or the assignees of the insured at his, her or their post Office address, then this policy shall be of no force or effect so long as such assignment shall remain.

Those who pay a definite sum in cash in full for their insurance in lieu of giving a premium note are not liable to assignment. Whenever an assignment is made on any premium note given to this Company, for any hazard taken by this Company on a consideration of any policy of insurance issued, and action is brought for the recovery of such assignment, the Certificate of the Secretary of the Company, specifying such assignment and the amount due the Company on such note by means thereof shall be taken and received as conclusive evidence in all Courts and places whatsoever. In all cases of neglect or refusal to pay any such assignment, so made on any premium note the Company may sue and recover of the assignor or of his assignees the whole amount of such note with Costs of suit and retain the balance thereof as security for further assignments, and the Certificate of the Secretary specifying such premium note and the amount thereof shall be taken as conclusive evidence in any such suit, for the recovery of the amount of such note in all Courts and places whatsoever.

- 18 In all cases of application for insurance in this Company the applicant shall state and set forth the true value of the property to be insured, the amount already insured on the same, the whole amount of incumbrances on the property

ty and the nature or kind of incumbrance, the true nature or tenure of his estate or interest in the property to be insured if less than in fee simple to the land on which the buildings to be insured are located, otherwise this policy shall be void and of no effect. And in case of other insurance, whether prior subsequent or bearing even date herewith, and not noted on the application, nor endorsed on this policy or otherwise approved in writing by the Secretary, then and in that case this policy shall be void. And should there afterwards, during the life of this policy an incumbrance fall or be executed upon the property, and the same be not approved in writing by the Secretary of this Company, then this policy shall be void. There shall be no waiver or evasion of any of these terms and conditions without the concurrence of the Secretary of the Company, endorsed hereon or otherwise specifically acknowledged in writing by him. All notices of other insurance's changes alterations, increased hazard, or of whatever else that may affect the rights or privileges of the parties must be made in writing to the Secretary at Freeport, Illinois, post paid and the date of the policy given.

Endorsed

St. John County Mutual Fire Insurance Company Freeport Illinois. Policy No 655. Messrs Lewis Smyth & Co Rockford Illinois. Amount Insured \$2000. Surplus \$100 Premium note \$240. Policy 50 Cash premium \$19.20. Insured for One year. Ending May 9, 1856.

C. W. Sheldon Agent

Premium Note

\$2400. For Value recd in Policy No 655 dated the 1st day of May 1835. issued by the Stephenson County Mutual Fire Insurance Company. The promise to pay the said Company the sum of two hundred & 40 dollars - cents in such portions and at such times or times as the Directors of said Company may agreeably to their Charter and by Laws require

Lewis Smyth & Co

Application of Messrs Lewis Smyth & Co of Rockford County of Illinois for Insurance against loss by fire by the Stephenson County Mutual Fire Insurance Company. for the sum of Two thousand dollars for the term of one year from the 1st day of May 1835 to wit: On their Starch manufactory

	Estimated Value	Insured Value	Rate of Ins
	\$9000.	\$2000.	12 1/2
On dwelling house			
Household furniture			
Wearing apparel therein			
Provisions and grain therein			
Barrel & shed adjoining			
Hay therein			
Grain therein			
Farming Utensils therein			
Live Stock therein			

Amount of Premium note \$240.

Amount of Cash Premium \$19.20

Where situated? No of Lots Block street & of Nos. of Sec. Town & Co

Of what Material?

Said building is situated in Rockford
 on west side the river on Lots (11)
 (12) water Sots
 Basement Stone

Dimensions on the ground?

Eighty by ninety

No of Stoves?

two

No of Chimneys

two

... Fireplaces

four

... Stoves

Do the pipes enter back Chimneys
or pass through wooden partition

Enter Bricks Chimneys

Lewis Longch & Co

How are they secured and how near to
wood?

Extends into good Chimney
not near any wood

Purpose for which occupied Starch
Factory

Starch Factory

Distance & direction from each other?

Amount insured on property in this
Company in this Exposure

None

What is the Title

Free Simple

If incumbers to what amount?

Eighteen hundred dollars

Is water near?

On the Lake: directly on

Overhead Agency
The owner also a good forcing pump with hose attached
Describe all buildings within 8 rods: North a four story stone
building belonging to the Water Power Company in which
is J.H. Munnys Reaping Manufactory: Main part is 80 feet
North of this with a stone wing running south toward this
building to within 20 feet of it wing is only one story of
Stone - a night watch is kept about the premises.

Is there any other insurance on this property?

And the said applicant, Commands and agrees with said
Company, that the foregoing is a correct description of the

property to be insured so far as regards the risk of the same
(ashes to be kept in a safe deposit)

In witness whereof the signature of the undersigned is affixed
this 9th day of May A.D. 1853.

Levis Smyth & Co Applicants

Chs 655

Approved May 11, 1853.

George Burninton } Director
L L Munn }

Chambers of Court

David Lewis Joshua B. Smith Henry C. Mes
for Clark Strong.

H B Jones called by defendants testified that there was at the
time of the fire a large quantity of Corn stored in the upper
Story of the building insured probably about 12 to 14.00 bushels
of Corn: The plaintiff objected to this testimony & the Court al-
lowing it to be given, the plaintiff excepted.

On Cross examination he testified that Corn was the grain
used in the manufacture of Starch & that plaintiffs were in
the habit of receiving into & taking from the said upper story
Corn nearly every day to use it in their Starch factory:
This being all the material evidence produced by the
parties the plaintiff asked the Court to instruct the jury
as follows

Lewis & Clark

vs

Ironie M & F Ins Co

Plaintiff Instructions

Jury

1st If the jury find from the evidence that the Defts made and delivered to the Plffs the policy of Insurance in question in this Cause that the property insured has been destroyed by fire while said policy was in force as stated in Plaintiffs declaration & that the Conditions in the policy in respect to preliminary proof Statement & notice have been substantially complied with by the Plaintiff the jury will find for the Plaintiff the amount ^{of money mentioned in the Policy} of such property destroyed has been proved to amount to \$4000 unless the jury shall at the same time find that the defence set up by the Defts has been proved by them.

2nd

Jury

If the jury find from the evidence that a Statement in substance as required by the Conditions of said policy was delivered to the defendants at the time required by the policy the jury will be authorized to find the Condition in respect to said Statement performed, Altho the jury may at the same time be in that such statement was informally, inaccurately & vaguely worded.

3rd If the jury find from the evidence that Geo Sheldon was the General agent of the Defts for the transaction of their business in respect to insurance a delivery of such Statement in the manner aforesaid to him was sufficient and if the

Jury

jury find from the evidence that such statement was delivered to said agent they will be authorized to find such statement was delivered to the Defts.

Refused

4th If the jury find from the evidence that a statement in substance as required by the said Conditions was delivered to the Defendants and received by them and that they received the same without objection thereto and without requiring a more perfect statement and pointing out the particulars wherein they requested fuller information such Conduct will authorize the jury to find an admission on the part of the defendants of the sufficiency of said statement although the jury may at the same time believe that such statement was somewhat informal and uncertain in its wording.

Given

5th If the jury find from the evidence that the Defts. receive such statement without objection and place their refusal to pay Plaintiff loss upon other and different grounds such Conduct would be evidence tending to show that the defendants admit the sufficiency of such statement although they may at the same time believe that such statement was informal and uncertain in its wording.

Given

6th If the jury find from the evidence that the defendants received such statement as is at the time aforesaid and at the time of receiving it or soon after admitted to the plaintiff the same to be sufficient it is not submitted to them now to deny its sufficiency and the jury will be authorized to find such

Statements sufficient altho they may at the same time be
have the same when been vaguely and inaccurately words

7th If the jury find from the Evidence that the premises insured
were built for the purpose of Manufacturing Starch from grain
and that such fact was known to the Defendants, or their a-
gent who effected the Insurance at the time of the issuing of
said Policy and that the said premises were insured as a
Starch Factory, designed to be used for the purpose of making
of manufacturing grain into Starch such facts may be taken
into Consideration by the jury as evidence tending to show
a Consent on the part of the defendants that Plaintiffs should
keep grain in such factory for the purpose of being manu-
factured into starch in the ordinary course of their busi-
ness in carrying on such factory.

8th If the jury find from the evidence that the Plaintiffs lost by
said fire on the property insured exceeds \$4000. being the
Amount insured by both Policies and should also be of
opinion that the Plaintiffs are entitled to recover in this
Action the jury will find for the Plaintiffs the whole
Amount insured by the Policy.

9th That if the jury believe from the evidence that the Plaintiffs
are entitled to recover in this Action they will allow the
Plaintiffs interest on the same they are found entitled to recover
on the Policy from the time the same became payable by
the terms of the Policy.

That if the jury believe from the evidence that at the time
13th the Defendant insured the premises in question that the Con-
tract of Insurance was made by both parties with refer-
ence to the Plaintiff manufacturing therein Starch from
grain and that the Corn in said building at the time of the
loss was there for the purpose only of being manufactured
into Starch in said building in the ordinary course of
the business of said Plaintiff in carrying on such starch
factory and that the quantity of Corn therein was no
more than was necessary for the convenient prosecution
of the said business of the Plaintiff such fact of such Corn
being therein will not constitute a defense in this action.

And the Court having given said instructions the
defendant excepted. The Defendant then asked the Court
instruct the jury as follows:

Given

Drft Instructions.

1st If the jury find from the proof that the Plaintiff has a large quantity of threshed grain stored in the building in question & that the building was appropriated applied or used for the purpose of storing or binding therein such grain without the Consent of the Defendants according to the Conditions of the Policy & that said grain was there when said building burned then the Defendants are not liable on said policy.

2^d If the jury find that at the time of the fire in question the Plffs were storing 1200 to 1500 bushels of shelled Corn in the building insured contrary to the terms of the policy in question & without the Consent of the Defendants then said policy became void & the Drft are not liable.

3^d If the jury find from the proof that the Plffs had no right to store threshed grain in the building in question by the Conditions of the policy in question and that at the time of the fire the Plffs were storing 1200 to 1500 bushels of shelled corn in said building without any Consent or agreement of the Drfts, then said policy became void & the Drft are not liable.

4th That the Plffs in order to recover in this action must show that they have given the notice & statement specified in the 11th condition annexed to said policy in the manner specified therein and that the Defendants have waived the giving the same in such manner and that if the Plffs have

failed to do so the Drfts are not liable & the jury will find
for the Drfts.

5

Grant

If the jury find that the Drfts in their application described
the Insurance previously effected by the Stephenson & Co as
materially different from the manner in which it had in fact
been effected such misstatement rendered said policy invalid
and unless said Plaintiff have proved that the Drfts have
waived such misstatement then the jury will find for the
Defendants.

to the jury of which the plaintiffs excepted. And the Cause
having been submitted to the jury they found a verdict for
the Plaintiffs for \$2127.00 whereupon the Defendants moved
for a new trial on the grounds 1st That the verdict of the jury
was not warranted by the proof: 2nd That it was not in ac-
cordance with the instructions of the Court: 3rd That was
Contrary to the Law & inclination.

And the Court having heard the motion overruled it &
rendered judgment on the verdict. To which decision the de-
fendants excepted & prayed an appeal to the Supreme Court
and that their bill of exceptions may be signed sealed & made
part of the record in this Cause: And it is done accordingly
agreed to by the parties Counsel for the parties.

Benj R Sheldon {Seal}
Agreed to by me J M Wright.

336-

State of Illinois } Morris B Derrick Clerk of the
Winnebago County } S. S. Circuit Court of said County, do hereby
Certify that the foregoing are correct copies of the records of files in
the foregoing Cause, in this Office, and that they are the whole
of such original records of files duly compared thereunto by me
Witness my hand and the seal of said Cir-
cuit Court at Rockford this Seventeenth
day of March 1837.
Morris B Derrick
Clerk

The Peoria Marine and Fire Insurance Company

vs

David Lewis Joshua B
Smith, Henry C Mesler
and Clark Strong — } Appellants.

Appeal from Winnebago

And now Counsel for the said Appellants and
say that in the Record and proceedings and
in the rendition of the Judgment aforesaid
there is manifest error in this to wit:

- 1st. The Court Erred in Sustaining the Verdict
to the Appellants 5th, 6th and 11th Pleas.
2. The Court Erred in admitting the evidence offered
by the Appellants which was objected to by Appellants
3. Especially the preliminary proof.
3. The Court Erred in giving the 1. 2. 3. 5. 11
8th and 9th instructions asked by Appellants
4. The Court Erred in Overruling Appellants mo-
tion for a new trial
5. The Court Erred in giving Judgment for the Appel-
lants and against the Appellants

For these & other manifest errors in
the Record & proceedings and in the rendi-
tion of the Judgment aforesaid they pray
that said Judgment may be set aside re-
versed and wholly for nothing returned
J. H. Apple Appellants, etc.

94

D
Wm. M. Munn & Son
Madison Co
Ill

James Smith & Co

Records

Filed April 8, 1857
L. Leland
Clerk

Swirl Lewis, et al
appellants
v
Ronia Burnes & Fire } Sup Court
as to appellants }

The Principal question in this case
I conceive relates to Preliminary Proofs

The doctrine I apprehend is well settled
that Courts in construing conditions relating
to Preliminary Proofs are accustomed to con-
strue such conditions with great liberality in fa-
vor of the insured.

They disregard ~~the~~ defects, merely formal
found in Preliminary Proofs unless the in-
sured when such proofs were delivered ^{to them} made
objections to the Proofs and pointed out the
same specially to the insured, all such objec-
tions would be held waived and the Proofs
delivered would be held a sufficient compli-
ance with the condition in that respect and
done made according to the terms of such con-
dition.

16 Wendell 402 held anticipations of
loss need not be in the precise words of the
condition sufficient if drawn to mean the same
things where defect is merely formal & no objec-
tion ~~to~~ Proof ^{to} made ^{to} considered & done
according to terms of policy.

2 Comstock 57 held insured should have
particularly pointed out principal defects, general
objection not enough.

The objection should be made when the
Proofs are delivered or will be held to have
waived such objection - 3 Sandp. Rep
42 3 Const. 128. 6 Harris & Johns 411

If dft. receive Preliminary Proofs with
out objection and upon trying on other
grounds, Objections, will be held waived
25 Lord 379

They are not permitted to make objection
after the time such proofs should have been
made and then object they were not made
in time. 6 Cr. 440. 345

That question whether dft. have waived
such proofs proper question to be left to jury
20 Pickney 396

The above ~~last~~ doctrine is supported
by the whole current of decisions. The policy
policies in the cases ^{collected with} referred to ~~are~~ ^{to be} substantially
like the 11th Section of the policy in question
See also 2 Rimes Rep 92. 22 Ohio
Rep (by 1 Lord Rep) 476

The dft assign for error the sustain-
ing Pleas demurres to the 5th Plea

This Plea attempts to set up as an alibi
that law to Plaintiffs action a new ground de-
fied in the Preliminary Proofs without showing that

they were insisted upon by the depts and
objected to by them for insufficiency. Besides
the 11th section itself does not make a compli-
ance with the provision attempted to be set
up in this plan a precedent condition to the
right of ~~redemption~~^{recovery} and the act requires
one of more form and entirely useless, which
in any event would have been voidable, unless
objected to and the omission to perform it
could not in any event have been a bar to
PLPs action & pointed out immaterial issues
the particular portions of this clause with its
first two parts of the 11th section is signif-
icant and should be noticed by the Court
The Court is, again referred to 16 bound 402
& 20 Pichy 396

deft assign for error the sustain-
ing the demurrer to their 6th plea

This Plea is an immaterial issue
and, ^{surely} to have the Court decide that a delay
of five days in giving notice of loss would be
chase the PLPs from recovering on this action
I apprehend this is not the law it is not the
law that a delay of five days in giving notice
of loss will prefit the insurance, 2 Kansas 96
a delay of 7 days in giving such notice would
not be prejudicial

It is proper to remark that another
plea pointed this point properly and that
on the trial the issue ~~would~~ was proved to
have been given in two days from loss

The 12 bond 452 merely decides that it was necessary in the declaration to have a compliance with the conditions of the policy respecting Preliminary Proof in the very terms of ^{the} condition and that it was not enough to allege a notice of the loss some six weeks after it happened without the consent ^{with} it was given with.

This case I think makes in our favor showing that the Plaintiff must be positive, and leading to the inference that the liability will be shown in admitting the Proof.

Sept, assigner for error that the 11th demurred to the 11th then was sustained.

This was the question of an incumbrance on the Premises after the making the policy.

There is a condition to the policy which provides that the Insured shall not assign this policy nor transfer the subject insured or in undivided interest, then.

This clearly is against alienation and not ^{against} incumbrance, it means that the Insured shall not convey away absolutely the whole or an undivided interest in the property insured.

The alienation puts an end to the right ^{interest} of the vendor to the subject insured while in reality the incumbrance of it does not reduce his interest in it as respects the Insurer.

The Insured is still interested to have the Property return its highest value so that if sold his profits may be increased and if he retains it that

it may retain all its value

That this Memorandum is no longer
the Court is referred to 1 Cushing 257
7 Forts N.H. Rep 143

Sept assign for error the admission
of testimony respecting Preliminary Proof

The Court will observe that the 3^d plan upon
which issue was taken denies the delivery of the
notes and the 4th plan (also upon which
issue was taken) denies that the statement of the
lors was given in.

Paper B, was proved to have been denied
after about two days after the lora and was a
sufficient notice and ^{was denied then 4 days thereafter} Paper C, was properly re-
ceived as it was a proposed statement of the lora and
in that respect sufficient. Several matters which the
^{shall be denied also}
11th condition of the Policy, was also denied
with Technical precision in one or two matters
the matters to be denied were not in the exact
words of the condition but I apprehend ~~many~~
men about the same thing and were proper
to be admitted.

Besides the 1st last of PLYs declaration
states that the 4th or the 25th Oct. which pre-
vious depositions in the Proofs and printed
an amendment of the Proofs which was made by
the PLYs on the 25 Oct. This is a sufficient ad-
mission of deposing of the ~~original~~ Original state-
ment to admit such depositions to be admitted
in evidence if the Court should believe (as I do
not believe)

that the statement was defective

The depts, ^{omit} ~~admit~~ from their ~~abstract~~
abstract a copy of letter & and further proofs
E & J which I trust the Court will examine
and which will be found in the list of ex-
ceptions on the record pages 17, 18, 19 & 20
as noted in brief on the record. & is a
letter from the depts. Secretary to Piffs Court
in to the Piffs then giving in sufficient Proofs
and E & J and such further Proofs and
the depts admit their ^{in this abstract} sufficiency, it appears
there that there was no error in subject to this
evidence it was relevant to the Pleadings & in
accordance with them and properly admitted
particularly in view of the fact, that it
was found that soon after the fire the
products referred to by the loss or other goods
and made no objection to these Proofs

The case 16 and 402 above cited is
opposed to support of this point

It is alleged that the depts Piffs did not
fully answer in respect to the Stephenson
Insurance that they misrepresented in the
abstract. The Premiums insured were described in
the Stephenson policy as a Stock Manufacturing
and in the other as a Stock Factory building
including fixtures and machinery. These des-
criptions I regard as identical in ~~the~~ meaning
a Manufacturing is a Factory and a factory is a
building with its machinery and fixtures where and

by means of which a manufacturing ~~for~~ pro-
cess is carried on, ~~with~~ a building in place
always, is held to include its fixtures which
when owned by the same person are always held
a part of the building and in this case the
proof shows that there was no washing in
the building but fixtures

In one case a Saw Mill was held to in-
clude building machinery and fixtures 20 Ben-
ton Sup Court Rep 635. 2 Foster N.H.
Rep 17 is a case in point

The giving direct instructions by the court
the depts assign for error

1st The first instruction admits the whole
evidence to the jury on the whole case, and instructs
them the Plffs were entitled to a verdict if they
had made ^{out} their case and the depts had failed
within depts. They in respect to preliminary Prop
they instructed them that ^{substantive} compliance was
sufficient I can discover no error in this

2 The second instruction that a substantial
compliance with condition ^{is} necessary preliminary
proof is sufficient

This I believe told the jury, as the
rule of fast compliance in all respects, is not
necessing, and the evidence should be submitted to
the jury ~~as~~ like ^{part} testimony these proofs
are not like deeds the effect of which is to be de-
termined by the court ~~to~~ see 20 Pickney

3

Third Instruction Review on an equity
of preliminary proofs is sufficient

This is laid down 16 Bacon Sup Court
Reports 511. 8 Exchequer Rep 819. 6 Cushing
342. 440

5

Fifth Instruction the receipt by depts of
such Preliminary Proofs tho informal, with
out objection & putting upon the party or other
grounds, evidence tending to their admission
by depts of sufficiency of such Proofs we believe
this to be law and is supported by 16 Wend
402

8

Eighth Instruction If Loss was paid
the whole and interest on the property
proved Puff of better evidence could never
be the whole and of the policy

This is laid down as laid in 6 Cushing
440 of history 205. 12 Metcalf 555
and was correct

9

Ninth Instruction If Puffs better
evidence could be shown that on the part of loss

As there can be English division re
paid interest and the American loss, allow
them but one statute is to govern.

The 2^d Section of the act concerning
~~Interest~~ Interest 1 People Stat 633 we be-
lieve gives interest without loss as the money
due under a policy is money due under an
instrument in writing

The Court will perceive that nothing in the instructions, my ~~repeated~~ calculations being, and the jury and if the Court will take the trouble to look through the record the Court will perceive that the action was meritorious, and that no more than justice was done.

and I hope the Court will especially examine letter B in the record in the view of exceptions taken on the trial

Points made by appellants
1st The 5th plea is no defence and the demurrer was ~~well~~ properly sustained, and it sought an immaterial issue. 16 bond 402 - 2 Comstock 57. 25 bond 374
3 Comstock 122¹²⁸ 3 Sandford Rep 42
6 Harris, & Johns 411. 2 Reman 81
6 Ashby 345 & 400

2^d Plea 6th plea was no defence to the action see case cited above & 9 bond 163

3^d Plea 11th plea is no defence to this action
1 Ashby 257-9 Johns 192. 25 bond 379
16 bond 385 401. 7 Forts, & H. Rep 143

4th Preliminary Points were properly admitted in evidence. See 1st Count to Count

to Pliffs declaration 15th page of it on
the record where the allegations of amend-
ment of Pross consist of dfts and waiver
of previous dfts and set forth, elsewhere
Letter B on 20th page of bill of exceptions
in the record.

See also the cases cited in support
of the 1st & 2^d Points above

5th The 1st & 2^d Instructions were properly given
See also cases in support of 1st & 2^d Points

6 The 3^d Instruction was proper see 16
Barlow Sup Court Rep 511, 8 Exch Rep 819
6 Cushing 342. & 440

7th The 5th Instruction was properly given
cases cited to support 1st & 2^d Point

8th 8 Instruction was proper see 6 Cushing 440
9th italics 205 - 12 italics 555

9th 9th Instruction was proper 1st Puffer 633
see 2 coming later

I trust the court will examine the amended
letter & in record bill of exceptions 20th
page bill of exceptions

Res. M. Wright
att'y for appellants

see for notice "forthwith" Ellis on Ins 130.1 Note 1.

12 Ward R 452 Minor Western A. Ins Co

3 Gilles R 276 Edwards v Balt Fire Ins Co

10 Reio 535 Curry v Connecticut Ins Co

Argo on Ins 258 to 270 Sects 230 to 248

" " 255 Sects 223 to 248 & notes. When

insurers point out no particular objection
to notices or preliminary proofs - all ob-
jections are considered as waived

14. Lewis
Gardner & others appellants

5

Provia M. D. H. v
Co appellants

Set-
Cont

Argument & 3
Points of appellants

Filed May 2. 1857
S. Delaney
Clerk