

5-17

66 Plaintiffs do like

Scaphers for Plfs."

"Filed Feb. 24, 1862

19 J^{ble} Lewis Clerk.

Charles Long & al,

Assumpt

This day

11 11

✓
New England Fire and Marine Ins. Co.

Know Circuit Court?

14
Feb'y Term 20 Mer } And the

58

said Plaintiff as to the said No. 2, 3, 4, 5 & 6. Pleas of the Defendant and each of them, saith that the same and each of them & the matters therein contained in manner & form as the same are above pleaded & set forth, are not sufficient in law to bar or preclude him, the said Plaintiff from having or maintaining this aforesaid action thereof against & that he, the Plaintiff is not bound in law to answer the same & this he is ready to verify

Wherefore, by reason of the insufficiency of the said Pleas & each of them in this behalf, the said Plaintiff prays Judg^t his damages by reason of the not performing of the said several promises & undertakings in the said declaration mentioned

Douglas & Sanborn
Attys for Plff

Causes of Special Demurrer:-

1- The said pleas and each of them amount to general issue

2- They are no answer to the declaration.

3- They constitute no defence.

“ “

- And upon the back of said instrument of writing, said Demurrer, there appears

59
The following:—
Filed Feb. 24 / 62 J. H. Lewis *cl*

February 26th and Mon.

140. Charles Long et al }
v. } Assumpsit.
New England Fire Ins. Co.

On motion of Plaintiff's attorney, it is ordered by the court that defendant be ruled to produce the books of defendant kept by their agent, J. P. Dorman at Salem Burg in which is entered the renewal of Policy No. 2, on which this suit is brought.

February 28th and Mon.

140 Charles Long et al }
v. } Assumpsit.
New England Fire & Marine Insurance Co.

On motion of the Plaintiff's attorney, It is ordered by the court that defendant's attorney be and he is hereby ruled to return the papers in this suit to the files of this Court; And that the said defendant produce the books ^{of defendant} kept by their agent.

~~61~~
61

J. P. Dorman at Galesburg, in
which is Entered the renewal of Policy
number two on which this suit is
brought, Instantly

Thereupon the clerk of this court issued
copies of the two last mentioned rules
and orders of court with certificate
that they were true and complete copies,
attached; and delivered them to
the sheriff of this court for service.

140. Charles Long et al } Assumpsit
v. New England Fire & Marine Ins. Co. }
This day
came the parties and their attorneys
and issues being joined, for trial
put themselves upon their country?
— Thereupon came a jury, to-wit:
Stephen Smith, E. Tucker, H. J. Quincy,
Paul Heahn, James Osborne, E. Col-
lister, F. A. Baldwin, G. Woodmanise,
E. M. Cook, A. M. Cornack, A. F.
Abernethy and Hiram Ward who
being duly elected, tried and sworn
well and truly to try the issues join-
ed, after hearing a portion of the
evidence, were permitted to separate
under instructions from the court
; and required to meet the court

at half past eight o'clock to-
morrow morning

62

March 1st 1888.

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

This day
again came the parties and their
attornies, and also came the Jury
heretofore Empanelled herein, - and
by agreement a juror was withdrawn
and this suit continued at Defendants
costs. And on motion of Plaintiffs
attorney, It is ordered by the Court
that the Defendants attorney be and he
is hereby ruled to return the papers
in this case to the files of this Court.

And it is further ordered that the
Defendant be ruled to produce the
books of Defendants, kept by their
Agent, J. P. Lorman at Galesburg
in which is entered the renewal
of Policy number two, on which this
suit is brought. It is therefore con-
sidered by the Court that the Plaintiff
recover of the defendant their costs
by them in this suit expended
at the present term of this Court and
may have Execution therefor.

May 26th A.D. 1862

62

This day clerk issued subpoena to Sheriff of this court.

May 31st A.D. 1862

This day Defendant filed his praecipe for witnesses. Whereupon subpoena was by the clerk duly issued.

June 2nd A.D. 1862

This day Defendant by atty files his praecipe for additional witnesses. Thereupon a subpoena was duly issued as per order.

June 2nd An M^o.

64

This day met the Circuit Court of Knox County Illinois (Hon. Charles P. Lawrence Judge Presiding) in Court in course of the June Term pursuant to adjournment; the record of which is as follows:—

State of Illinois?
Knox County S^{ss}. June Term an M^o

Pleas before the Hon Charles P. Lawrence, Judge of the Tenth Judicial Circuit of the State of Illinois, At a court begun and held at the Court house in the city of Knoxville in said County on Monday, the 2nd day of June in the year of our Lord one thousand, eight hundred and sixty-two, being the first Monday of said month.

Present:—

Hon. Charles P. Lawrence Judge
James H. Stewart, State Attorney
John H. Lewis Clerk
E. C. Pratt Sheriff.

— Court opened by proclamation.

11 11

* see below as there referred to, Page 65 — Amendment of Record of

By Stipulation this 11th day of March A.D. 1863 as follows: —

State of Illinois, Knox County / ss. Knox Circuit Court. Charles Long et al. v. New England Fire & Marine Insurance Company. It is stipulated & agreed that the Demurrer of Plffs. to Defts 2, 3, & 4 & 5 & 6 pleas, was sustained to all of said pleas & leave given to amend & afterwards 2 other amended pleas were filed by leave of the court thereon, this stipulation is made for the reason that the record does not show the orders on said demurrer or amended pleas, Douglas & Craig for Plffs, A. Tyler atty for, Defts. Filed April 11, 1863 J. H. Lewis clk Amended pleas. — The New England Fire and Marine Insurance Company } Knox Circuit Court ads. Charles Long et al. Amended plea 1. And for a further } The Big Term and Mar 2 plea in this behalf the said Deft. says Actio non. Because it says at the time of giving of supposed renewal receipt to Stewart & Scroggs, the said Stewart & Scroggs were not the assignees of said mortgage interest in said premises as averred in said Plffs declaration. And this Deft. is ready to verify, Wherefore he prays judgment &c. — Amended plea 2. — And for a further plea in this behalf said Deft. says Actio non, because it says Stewart & Scroggs did not assign the mortgage interest in said premises to this Deft. as averred in said Plffs declaration. And this Deft. is ready to verify. Wherefore it prays judgment &c. Ford & Ransom Attys for Defts. Filed June 9, 1862 J. H. Lewis clk. — Thereupon on the same day came Plffs and filed their Replication to Defts 1 & 2, ^{amended} pleas above set forth, which replication is as follows: —

June Term 1862. Chas Long et al. v. New England Fire & Marine Ins. Co. And now comes the Plaintiffs & say precludi non as to Defts 1st amended plea, because they say at the time when &c. they, the said Stewart & Scroggs were the assignees of the said mortgage interest & of this they put themselves upon the country Lamphere & Douglas for Plffs [Deft. does like Ford & Tyler for Defts] — And for further replication hereto as to Defts 2 Amended plea, the Plffs say precludi non, because they say that at the time when &c. said Stewart & Scroggs did assign said mortgage interest to Defts as alleged & of this they put themselves upon the country &c. Lamphere & Douglas

Deft. does like Tyler for Defts

Filed June 9th 1862 A.D. J. H. Lewis clk before issues joined

June 5th A.D. 1862.

80.

~~65~~

65-

Charles Long et al for use &c }
v. } Assumpsit
New England Fire & Marine Ins. Co }

This day
Came the Defendant and moved
the Court for leave to withdraw plea
filed herein, And the Court having
heard said Motion, It is ordered
that the same be over-ruled. And
now come the Plaintiff by their Attorney
and on this motion it is ordered
that an attachment issue herein
for J. P. Dorman, a witness herein.

* See above To Page also numbered in red 65 - see Stan

June 9th A.D. 1862.

80,

Charles Long et al for use &c }
v. } Assumpsit
New England Fire & Marine Ins. Co }

This day
Came the parties and their attor-
nies and issues being joined, for
trial put themselves upon the Country
Thereupon came a jury, to wit:
E. M. Brown, J. B. Lomas, Abram
Elwell, A. S. Bonham, J. H. Hubbard
J. M. Brown, J. S. H. Chesney
Simeon Richmond, Edward West
S. H. Ritchey, John Jackson and
J. S. Rude, who being duly elected

65
66

Tried And sworn well and Truly to
try the issues joined, after hearing
the Evidence, were permitted to
separate under instructions from the
Court And required to meet the
Court ~~at~~ to-morrow morning at
8 o'clock.

June 10th A.D. 1862

Charles Long, George H. Wetmore & Mary A. Wetmore
For use of &c.

v.
New England Fire and Marine Insurance Company

Accumulated

This
day again came the parties And
their Attornies, And also came
the jury heretofore Empanelled herein
who after hearing the arguments of
counsel, upon their oaths do say
"That the jury find the issues for
the Plaintiffs, And assess their
damages at the sum of six hun-
dred And thirty three dollars".

Thereupon came the Defendant
And moved the Court for a new
trial And in arrest of judgment
herein.

— And on the same day, at the
Argument "of counsel" as aforesaid

to
67

The Plaintiff by their Attornies
placed upon the files of the Court
instructions for the jury as ~~above~~^{before}
which are as follows, as given or
refused or modified to the jury, the
Judge of this Court:—

Given:—

5. — The jury is instructed that the hitching
of a horse in the building would not
make the building more hazardous un-
der the conditions of insurance, unless
it was in addition used as a common
stable & thereby brought within the con-
ditions of the Policy.

"Filed June 10 P62. J. 36, Lewis (clerk)"

Refused:—

1. — The jury is instructed that if they be-
lieve from the Evidence that the build-
ing was made extra-hazardous, still
if it was so made by the tenants as
in abuse of the privileges of the tenants
& that it was without the knowledge or
assent of Stewart & Scroggs or the
Plaintiff, that in that case the Policy
of Insurance, would not be affected.

2. — The Jury is instructed that if they
believe from the Evidence that the build-
ing was made extra-hazardous by
the tenant, the occupant of the building
& that the Defendant through their agent
J P Norman was notified of the fact

67
68
I failed to rescind the Policy or give notice thereof to Stewart & Scroggs or the Plaintiffs. I that the so using the building was in Abuse of the Tenant's rights & privileges & without the assent or knowledge of the Plaintiffs or Stewart & Scroggs, the jury may infer consent by the acts. to the use of the property in that way

3 - The jury is instructed, that if they believe from the Evidence that the property was made extra Hazardous prior to the loss, still that will not affect the Policy unless it was so made extra hazardous at the time of the loss by fire
Refused }

4. - The jury is instructed that the using of said Building in part for a stable for a horse would not render it extra hazardous unless the jury believe from the Evidence that hay and combustible material was kept therein in such manner as to make the property more hazardous. & this is a question of fact to be determined from the Evidence by the Jury as to whether it was made more hazardous
— The word stable in the Condition is used in its ordinary acceptation & it is a common stable that is made
Refused }

Hazardous by the conditions

61.
68
69
Refused }
— If the jury believe from the Evidence that the building was used by the tenants as a stable & without the assent or knowledge of the Plaintiff or Stewart & Scroggs & that the Deft, through their Agent was notified of the fact, & that Deft, knowing how it had been used & that the Defendants after the fire knowing all the facts, had an Assessment of damages made under the Policy; that then the Jury from these facts & all the circumstances surrounding the case, may infer that the Defendants waived all objections on account of the improper use of the building, unless the jury believe from the Evidence that the company refused to pay the loss on account of the improper use of the building

Refused }
— The Jury is instructed that the making and delivering of an assignment of the mortgage interest of Stewart & Scroggs before the bringing of this suit is a compliance of the condition to said Policy requiring such assignment & it is a question of fact for the Jury to determine from all the evidence whether such assignment was made & delivered or not

67
Given } The Court will instruct the Jury
71 that the issue presented by the Plead-
ings is not whether Stewart & Scroggs
refused to Assign to Defendants the mort-
gage mentioned in the Pleadings,
But whether Stewart & Scroggs did
Assign said mortgage to the defend-
ants before the commencement of
this suit.
"Filed June 10th / 1871 J. H. Lewis Clerk

Defendants Instructions, &c
George H. Wetmore et al, for use of
McFarland
v.
New England Fire & Marine
Insurance Co.

The court
will please instruct the jury as fol-
lows:-

- 1st - If the jury believe from the evidence that a
part of the building insured as a boarding
house was used and occupied as a
stable since the execution of said
Policy & before the fire without the written
consent of said Co., the jury will
find for the plaintiff.
- 2nd - If the jury believe from the evidence
that spiritous liquors were kept in

Given }
78
71

shop for sale in said insured building without the consent of the Company in writing. After the execution of the Policy & before the fire occurred, they will find for the Wt.

3d

Given }

If the jury believe from the evidence that on the 23d day of July, 1881, or at any other time after the fire, the said Stewart & Scroggs by themselves or through their Atty, G. C. Sanphere refused to assign to Wt. all their interest without imposing unreasonable conditions upon said Wt. in said Assignment to said Wt., then the jury will find for the Wt., unless they believe from the evidence that the Wt. - afterwards & before the commencement of this suit, accepted an Assignment of the mortgage interest in said property. (But the fact that Stewart & Scroggs insisted that they were not to be called on to pay any of the court costs in obtaining a decree on the mortgage, was not an unreasonable condition within the meaning of the first part of this instruction.) -

4th.

Unless the jury believe from the evidence or upon the admissions made by defendant & read to the jury, that the persons sustaining loss in the said building on

72

Given }

Said premises insured, gave notice in writing to said Company or their Agent as soon after as possible as particular an account of the loss and damage as the nature of the case would admit signed with their own hands, And accompanied the same with their oath or affirmation declaring the said account to be just & true and showing what other if any insurance had been made on said property & what was the whole cash value of the subject insured & what was their interest therein & in what general manner as to trade, merchandize or otherwise the building insured and the several parts thereof were occupied, if occupied at the time of the loss; & who were the occupants of such building if occupied, & when & how the fire originated so far as they know or believed; - And also produce a certificate under the hand & seal of a Magistrate, Notary Public or Commissioner of deeds most contiguous to the place of fire & not concerned in the loss as creditor or otherwise, or related to the insured or sufferers stating that he had examined the circumstances attending the fire, loss or damage alleged and that he was acquainted with the character & circumstances of the insured or claimants and that he verily believed that

77
78
They had by misfortune & without fraud or
evil practices sustained loss & damage
on the interest insured in said property
to the amt. in such certificate still which
shall have been certified to by the proper
officers; The Jury ^{will} find for the
Plffs. —

4th - If the Jury believe from the Evidence
that at the time of the renewal of the
Policy by Stewart & Scroggs they
Given } had no interest in the said insured
property, they will find for Plff.

" Filed June 10, 1862, J. W. Lewis (Clk.) "

Defendants Instructions - Refused.

5th - If the Jury believe from the Evidence
that the mortgage interest in said premises
& policy at the time of the fire had been
assigned to Stewart & Scroggs & the
assignment of the Policy consented to
Refused. } by the Insurance Co., and that the
Plffs, Wetmore & Long had no interest
in said Mortgage or policy at the
time of the fire, the Jury will find
for Plffs. —

6th - If the Jury believe from the Evidence
that the Plffs. Long & Wetmore were
the owners of the said mortgage interest

insured in said premises at the time
of the fire & that upon this trial
Refused they have not proven, that they made
74 the proof to the Ref't, as stated in
Instruction No. 4, & Jury will find
for the Ref't.

5th - ~~Ref't~~ - If the Jury believe from the
Evidence that the said Stewart &
Scroggs refused to make an uncon-
Refused) ditional assignment of said mort-
gage interest insured to Ref't, at
any time after the fire, & the Jury
will find for the Ref't.
"Filed June 10th Mer. J. B. Lewis Ck." " " "

Copy of the verdict of the Jury
"We the Jury find the issues for the
Plaintiff and assess their damages
at the sum of six hundred & thirty three
dollars. J. B. Ritchey Foreman.
"Filed June 10. /67, J. B. Lewis Ck." " " "

June 13th An. Mer.
Charles Long et al. for use of }
New England Fire & Marine Ins. Co. } Assumpsit
This day

7#
75

came the Plaintiff by Attorney and Entered a ~~remitter~~ remittitur of the sum of Ten dollars on the verdict of the Jury. — Whereupon, on motion it is ordered by the Court that Defendant's motion for a new trial and in Arrest of Judgment herein, be Continued until the next term of this Court.

“ ”

~~“ Motion for a new trial And In Arrest of Judgment And Reasons ”~~

~~State of Illinois }
Knox County } ss. Knox Circuit Court
June Term A.D. 1862.~~

~~George B. Wetmore et al~~

~~et
New England Fire & Marine Ins. Co. } Accomplish~~

~~The Deft.
comes & moves the Court for a new
trial And in Arrest of judgment for
the following reasons, to wit:~~

~~1st Because the Declaration shows upon its face
that the Plffs had no interest in
the property insured, at the time of
the fire.~~

~~2nd Because George B. Wetmore & Mary. A. had
Assigned their interest in the Policy
& mortgage interest in said property~~

75
76

September Term 1862
State of Illinois }
Spencer County } ss. Pleas before the
Hon. Charles C. Lawrence, Judge of
the Tenth Judicial Circuit Court
of the State of Illinois, at a Court
begun and held at the Court House
in the City of Spencer in said
County on Monday the 22nd day
of September in the year of our
Lord one thousand eight hundred and
sixty two, being the fourth Monday
of said month.

Present
Hon. Charles C. Lawrence, Judge
James H. Stewart, State Attorney
John A. Lewis, Clerk
E. C. Pratt, Sheriff
By Wm. McGowan Deputy

Court opened by proclamation.

~~Charles Long~~ " "
September 24th 1862

Charles Long, George H. Wetmore
and Mary A. Wetmore for the use of
John M. Harland

43.
v.
New England Fire & Marine
Insurance Company

Assumpsit

This cause

76
77

Coming on to be heard on Defendant's motion for a new trial and in arrest of judgment, And the Court having heard the same, It is ordered that the said motion be over-ruled. — Therefore it is considered by the court that the Plaintiff recover of the Defendant the sum of (\$123.) six Hundred And Twentythree dollars, (being the Amount of the Plaintiff's damages assessed by the Jury herein (after deducting the sum of Ten dollars remitted by the Plaintiff) together with their costs by them in this suit expended, And may have execution therefor.

Thereupon came Defendant by attorney And Excepted to the rulings and decision of the Court, And prayed An Appeal to the Supreme Court of the state of Illinois.

Thereupon, It is ordered by the Court that such appeal be allowed upon the Defendant Entering into a good and sufficient Appeal bond in the sum of Twelve Hundred dollars, to be approved by the clerk of this Court by consent, — And filing its bill of exceptions herein within sixty days of the date thereof by agreement

November 23rd A.D. 1862

78

This day came the Court and placed upon the files of this Court the following Bond:—

Know all men by these presents that we, "The New England Fire and Marine Insurance Company", principal, and R. P. Sage and Josias Grant, securities, parties of the first part, are held and firmly bound unto George H. Wetmore, Mary A. Wetmore & Charles Long for the use of John W. Farland parties of the second part, in the special sum of twelve hundred dollars lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and Administrators, jointly, severally and firmly by these presents

Witness our hands and seals this 14th day of November A.D. 1862
— The condition of the above obligation is as follows:— Whereas the said George H. Wetmore, Mary A. Wetmore & Charles Long did for the use of John W. Farland on the 24th day of September A.D. 1862 in the Circuit Court of Knox County, State of Illinois

79
At the September Term thereof a Verdict
recovered a judgment against "The New
England Fire & Marine Insurance
Company" for the sum of six hun-
dred and twenty three dollars, ten
dollars being remitted by Plaintiff
and Costs of suit, from which
said judgment the said "New Eng-
land Fire & Marine Insurance
Company" has prayed ^{and taken} an Appeal
to the Supreme Court of the State
of Illinois;

Now if said "New England Fire
and Marine Insurance Company" shall
duly prosecute said Appeal and
shall pay said judgment, costs, interest
and damages and whatever judgment
may be rendered against it, in case
said judgment shall be affirmed
then this obligation shall be
void; otherwise to remain in
full force and effect.

In testimony whereof the said
parties of the first part have here-
unto set their hands and seals
the day and year first above written

Seal of the New England
Fire & Marine Insurance
Company

Geo. D. Jewett Pres.
Robt A. Johnson Secy pro tem.

R. P. Sage

Josias Grant

Signed and Sealed in presence of
Francis Haumen }

On the back of said Bond there appears
the following Endorsement:-

77
80
"Filed and approved by me this
"25th day of November A.D. 1882
" & filed at the time of approving
" John H. Lewis Clerk"
" "

Bill of Exceptions.

State of Illinois?

Know County Jds. Knox Circuit Court
Sept. Term A.D. 1882

George E. Wetmore et al, who sue
for the use of John W. Harland
v.

New England Fire and
Marine Insurance Company

Assumpsit.

It is remembered
It is remembered that
on the 9th day of June A.D. 1882 at
said June Term of said court this
Cause was called for trial and a jury
sworn and empanelled to try said cause,
— And the said Plaintiff to maintain
the issue on their part offered in
evidence two notes & Mortgage executed
by William H. Marvel to John Riggan
with the assignments on the same
, to the giving of the same in
evidence, the Defs. then & there objected
in open Court — Which are as follows

A
81

" November the sixth 1836 for value re-
"ceived six months from date I promise
"to pay to John Rigger or bearer the sum
"of three hundred and seventy five dollars
"with six per cent interest from date
" William H. Marvel "

— On the back of said note is as follows:—
"Rec'd on the within note one hundred
" & sixty five dollars 165.00
" Nov 15- 1836 "

" I hereby agree to guarantee the payment
" of the within note Feb. 2, 1837
" John Rigger "

" — Received on the within notes all of
" the face and interest of the same
" up to the present date paid and ex-
" cept the sum of one hundred and
" twenty nine ^{dollars} and seventy three cents
" which is now due and remaining un-
" paid, Jan. 20, 1838
" By the understanding of all parties
" W. C. Watto, "

" Mary A. Wetmore. S. H. Wetmore. "
" " "

2nd note

" Galzburg November the sixth 1836
" twenty four months from date I prom-
" ise to pay to John Rigger or bearer the sum
" of one thousand dollars it being for

"value received with six per cent in-
"terest from date & ten per cent after
"due. William B. Marvel."

82

On the back of said note appears as follows:
"Mar 10, 1859 For value received
"I assign the within to M. A. Wetmore
"Charles Long with recourse on me
"John Riggan"

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

Mortgage. This Indenture made this sixth day of
November in the year of our Lord one thou-
sand, eight hundred and fifty-six, between
W. B. Marvel, of the first part, and
John Riggan of the second part, Witnesseth
that the said party of the first part for and
in consideration of the sum of two thousand
dollars in hand paid by the said party
of the second part, the receipt of which
is hereby acknowledged, do by these
presents grant, bargain and sell
convey and confirm unto the said
party of the second part, his heirs
and assigns a certain tract or
parcel of land situated in the county
of Knox and state of Ill. And in
the town of Galesburg, described
as follows: - being lot No (3) Three
in Block No. Fifty-Two. Together
with all and singular the hereditament
rights, privileges and appurtenances

Description

83

Thereunto Belonging or in any wise apper-
taining; To Have and To Hold the
said premises as above described unto the
said party of the second part, his heirs
and assigns forever, And the said
party of the first for himself and his
heirs, executors, administrators and
assigns hereby expressly waives and
release to the said party of the second
part, heirs, executors, administra-
tors and assigns all right of exemption
in and to said premises and each
and every part thereof under or by vir-
tue of a certain Act entitled "An Act
to Exempt Homesteads from Execution"
approved February 11th, 1831, so far as
the said premises may be held or af-
fected by this mortgage.

And the said party of the first part
for himself and his heirs, executors
and administrators, does hereby cov-
enant to and with the said party of the
second part, his heirs, executors and
administrators and assigns, that he
is well seized of the premises above
conveyed as of a good and indefeasible
estate of inheritance in fee simple and has
good right to sell and convey the same
in manner and form aforesaid; that
the above described premises are
free from all incumbrances; and that
the above described premises in the

84

quiet and peaceable possession of the said party of the second part, his heirs or assigns against the claim of all persons whomsoever he will forever warrant and defend.

Provided Nevertheless, That if the said party of the first part, his heirs, executors or administrators shall well and truly pay to the said party of the second part, his heirs, executors, administrators or assigns the just and full sum of ~~the~~ ^{two} thousand dollars with interest as follows: - 250⁰⁰ dollars with use on the ~~on~~ first of January 1837; 340⁰⁰ dollars with use on the sixth day of May 1837; 345⁰⁰ dollars with use on the sixth day of November 1837; One thousand dollars with use on the sixth day of November 1837, Then this deed as also four certain promissory notes bearing date November fifth 1836 given by W. H. Marvel to John Rigger Conditioned to pay the said sum of \$2000⁰⁰ at the time aforesaid shall be void; otherwise to remain in full force and virtue.

In Testimony whereof, the said W. H. Marvel has hereunto set his hand and seal the day and year first above written

William H. Marvel {
Signed, sealed and delivered in presence of

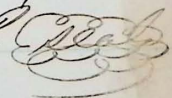
State of Illinois }
County of Knox } ss.

I, A. C. Wiley a

865

Justice of the Peace of said County, do
certify that on this day personally appear-
ed before me W. H. Marvel whose name
appear signed to the foregoing deed of
conveyance and who is personally
known to me to be the identical person
whose name is subscribed to said deed
as having executed the same, and
acknowledged that he had executed
the same as his voluntary act and
deed for the uses and purposes there
in expressed

Given under my hand and
seal this 14 day of November
eighteen hundred and fifty six

A. C. Wiley J. P. 

State of Illinois }
Knox County, ss

No 4390,

I, Ephes Arms, clerk
of the Circuit Court and ex-officio Recorder
within and for the said County of Knox
and State aforesaid, do hereby certify
that the within and foregoing Instru-
ment of writing was filed for record
on the 10 day of June A.D. 1857 at 4 o'clock
A.M. and recorded in Vol. 4 of "Mort."
on page 461

Intestimony whereof I have then

84
unto set my hand and affixed the
seal of said court, at Knoxville
This 10 day of June A.D. 1839
{L.S.} Lephas Armes clerk

State of Illinois }
Gnox County } Galesburg March }
10th 1839 }

For value received I hereby as-
sign and set over to M. A. Wetmore
& Charles Long all my right, title
and interest I have and hold to
the within mortgage — but in fore-
closing the with mortgage the as-
signor is to be from costs

John Ruggen
Anna ^{her} Ruggen
mark

State of Illinois }
Gnox County } ss.

For value received
We hereby sell and assign the with
in mortgage & promises therein describ-
ed & all our right & title thereto to
Charles L. Long who is the assignee
intended in the above assignment
of John Ruggen

Galesburg March 25, 1839.

G. E. Wetmore
Mary A. Wetmore

State of Illinois }
Gnox County, City of Galesburg } ss. L. J. 36

~~86~~
87

Wood a Notary Public in and for
said city in said County and
State, do hereby certify that on this
day personally appeared before
me G. B. Wetmore and Mary A
Wetmore whose names appear signed
the foregoing Assignment and who
are personally known to me to be the
identical persons whose names are
subscribed to said Assignment as
having executed the same, and ac-
knowledge that they had executed
the same as their voluntary act and
deed for the uses and purposes
therein expressed. And the said Mary A
Wetmore wife of the said G. B. Wetmore
having been by me made acquainted with
the content of said Assignment and
being by me examined separately
and apart from her said husband, acknowl-
edged that she had executed the same
freely, voluntarily and without ^{any} com-
pulsion of her said husband and
that she does not wish to retract
the same

Given under my hand and notarial
seal this twenty eighth day of March
A.D. 1839

{L.S.} J. Herman Wood
Notary Public

— but the execution thereof being

88

duly proven, the Court over ruled the objection And permitted the same to go in evidence. To the decision of the Court in admitting said notes, Mortgage & assignments in evidence, the said Wtft. then & there in open Court objected And excepted.

The Pff next offered in evidence the Policy of Insurance without the Application; to which the Wtft. objected. But the Court over-ruled the objection And permitted The Pff to give in evidence the said Policy without the Application. To the decision of the Court in over-ruling said objection And allowing said Policy to be read in evidence to the jury, without the Application, the said Wtft. then & there ~~objected~~ in open Court objected And excepted. Which said Policy is as follows:—

"New England Fire & Marine Insurance Co., of
 Hartford, Conn. No. 2 — \$9.00

— By this Policy of Insurance the New England Fire & Marine Insurance Company, in consideration of nine dollars to them in hand paid by the assured hereinafter named, the receipt whereof

89

is hereby acknowledged, Do Insure M. A. Wetmore & Charles Long, of Galesburg, Iowa Co. Ill., against loss or damage by fire to the amount of \$9.00.00 for the period of one year their mortgage interest on a boarding house on the West side of Depot street in said Galesburg on lot 3, and Block 55. —

And the said company for the consideration aforesaid, do hereby promise And agree to make good unto the said assured, their executors, administrators and assigns, all such loss or damage not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the seventeenth day of March one thousand, Eight hundred and fifty nine (at 12 o'clock noon) ~~unto~~ the seventeenth day of March One thousand, Eight hundred and sixty (at 12 o'clock at noon) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen and to be paid within sixty days after due notice and proof thereof, made by the insured and received at this office. in conformity to the conditions annexed to this Policy. Provided always and it is hereby declared that this company shall not be liable to make good any

89

loss or damage by fire which may happen or take place by means of invasion, insurrection, riot or civil commotion or of any military or usurped power or any loss by theft at or after a fire. And provided further that in case the assured or any other persons or parties with the knowledge of the assured shall have existing during the continuance of this Policy, any other insurance against loss by fire on the property hereby insured and not consented to by this Company in writing, and mentioned in or endorsed upon this Policy, or if the assured shall make any attempt to defraud, the Company, then this insurance shall be void and of no effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not in case of loss or damage, be entitled to demand or recover on this Policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time after the making of, and during the time this Policy would otherwise continue in force, be appropriated, applied or used to or for the purpose of carrying on or expending

91
ing therein Any trade, business, or vocation
denominated Hazardous or extra-hazardous
or specified in the list memorandum of
Special Hazards, in the terms and conditions
annexed to this Policy, or for the purpose
of storing therein any of the Articles
Goods or Merchandize in the same terms
and conditions denominated Hazardous
extra hazardous or included in the mem-
orandum of Special Hazards, except
therein specially provided for or hereafter
agreed to by this Company in writing,
to be added to or Endorsed upon this
Policy, then and from thenceforth, so
long as the same shall be so appropri-
ated, applied or used, these presents
shall cease and be of no force or effect.

And it is moreover agreed and
declared that this insurance is not
intended to apply to or cover any books
of account, written securities, deeds,
other evidences of title to lands, nor
to bonds, bill, notes or other evidences
of debt, nor to money or bullion. And
that this Policy is made and accepted in
reference to the terms and conditions
hereto annexed, which are to be used
and resorted to in order to explain the rights
and obligations of the parties hereto in
all cases not therein otherwise especially
provided for.

— This Insurance (the risk not being
changed) may be continued for such term

92

Term as shall be agreed on, provided the premium therefor is paid and Endorsed on the policy, or a receipt given for the same.

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

This Policy shall not be valid until countersigned by the Authorized Agent of said New England Fire & Marine Ins. Co. at Galesburg Ill.

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

N. M. Waterman President
Geo. D. Jewett, Secretary

— countersigned at Galesburg this 19th day of March 1889

J. P. Norman Agent

Condition of Insurance

- 1- Applications for insurance on property must be in writing and must specify the construction and materials of the buildings to be insured or containing the property to be insured, by whom occupied, whether

93

~~"wool mills, wheelwrights' shops and general
 "by all mills and manufacturing mills
 "establishment and all trades and oc-
 "cupations requiring the use of fire heat
 "not before enumerated,"
 "kerosene, spirit gas or "burning fluid"
 "when used in stores, warehouses, shops
 "or manufactories, as a light, subjects
 "the goods therein to an additional
 "charge; and permission for such use
 "must be indorsed in writing on the
 "Policy. Gunpowder, Phosphorus and
 "Salt Petre are expressly prohibited from
 "being deposited, stored or kept in
 "any building insured or containing
 "any goods or merchandise
 "insured by this Policy unless by spe-
 "cial consent in writing on this Policy.
 "Kitchens and privies, also store furn-
 "iture and fixtures must be separated
 "and specifically insured"~~

The said Pffs. next offered in evidence
 the assignment of Wetmore of the said
 Policy to Chas. Long, first proving
 their signatures & the consent of Nor-
 man, the agent of the said Insurance
 Company on the back of said Policy to
 the giving of the same in evidence
 the Defr. objected. But the Court

94

over ruled the objection and permitted
the same to go in evidence. Which
said assignment and consent are as
follows:—

"For value received I hereby trans-
fer, assign, and set over unto Charles
Long and his assigns, all my title
and interest in this Policy and all
advantage to be derived therefrom
Witness my hand and seal this
31st day of March A.D. 1839
M. A. Wetmore
G. H. Wetmore "

"The New England Fire and Marine
Insurance Company hereby consent
that the interest of M. A. Wetmore
in the within Policy, subject to all
the conditions and terms therein men-
tioned and referred to, be assigned
to Charles Long
Salem, March 31st 1839. J. P. Norman Agent

— To the decision of the Court
in permitting the said assignment
& consent to go in evidence, the
Deft, then and there in open court
objected and excepted.

165

— The Plff. next offered in Evidence
The agreement of the Plff & Def. as
to the agency of Norman &c. which
is as follows;—

"Charles Long et al. for
"use of J. W. Harland } In the Knox
"v. } Circuit Court
"New England Ins. Co } June Term 1881.

— Defendants admit
"That J. P. Norman was the Agent
"of Def. at Galesburg, Ill., from
"the time of the issuing by Defs. of
"the Policy sued on in this case &
"has continued so down to the present
"time.

"2nd That John C. Stewart & Joseph
"C. Scroggs delivered to said Norman
"on the 29th day of March A.D. 1881, a
"notice and proof of the loss by fire of
"the building so insured by Defs.

"3rd That the said Norman as such
"agent consented in writing on the
"24th day of Jan'y A.D. 1882 on the
"back of said Policy to the assignment
"of said Policy by said Charles
"Long to Stewart & Scroggs

"4th That the books of the Defendants
"in the custody of said Norman

"as such agent, show the date of
"such assignment and that the
"defts. consented to it.

16

"This agreement is made for the
"purpose of not calling J. P. Corman
"as a witness.

"Douglas & Gampers
"for Pff

"Tyler & Ransom
"for defts"

The said Plaintiffs next offered in
evidence a renewal receipt of said com-
pany to Stewart & Scroggs. To the
giving the same in evidence, the
deft. objected after the execution
of the same was proven; - Which is
as follows to-wit: -

66
"New England Fire & Marine Insurance
"Co., of Hartford, Renewal Receipt No. 5
"Galesburg Agency. Rec'd of Stewart
"Scroggs seven ⁵⁰/₁₀₀ dollars, being
"the premium on six hundred dol-
"lars insured on Policy No. 2, ^{which}
"is thereby continued in force for one ^{year}
"to-wit, from the 1st day of March
"1860 until the 1st day of March 1861
"at noon

"N. N. Waterman President

#6
97
"Geo. D. Jewett Secretary.

"Countersigned at Galveston this 19 day
"of March 1860

"J. P. Norman Agent

— but the Court over-ruled the
objection and admitted the same
in evidence to the Jury. To the
decision of the Court in permitting
the said receipt to go in evidence
the left, then & there in open court
objected and excepted

— The Plaintiffs & further maintain
the issue on their part, called & swore
James B. Boggs as a witness; who tes-
tified that he knew the marble prop-
erty on Lot 3 in block 52 orig-
inal town of Galveston situated
I think on Depot Street, Southwest
continuation of Gillogg Street, little
north of East of the "Paneroft House"
— I was at the fire a little after
midnight between the 9th or 10th of
March A.D. 1861. I do not think the
building was occupied. Saw Norman
at the fire. The building was wholly
destroyed. I have passed the build-
ing frequently. I recollect the proof
of loss (The Paper with the Proof of

loss handed to the witness.) The signature & seal are mine.

98

Cross Examined by Plff.

"I think the building was on Depot street

"—I would not swear positively to it.

"—Know the description of the property:

Plff. next called & swore as a witness
W. A. St. Carpenter; who testified:—

"I know the building — think it was
"on Depot street, I know of the loss by fire.

"The building was northeast of the "Pan
"croft House". — I was called upon to
"appraise the property. — Am a carpen-
"ter by trade, I swore to the affidavit
"of the Declaration of appraisement or award

"— Billings & myself signed the
"Award, — I was requested to act by
"Horman, I have not examined the
"property since. — The estimate in
"our Award or estimate, signed by us,
"is the amount of damages that we
"Estimated it at." —

— The Plaintiff then offered in evidence
the Agreement to Appoint Appraisers; the
oaths of Appraisers; — and their
Assessment or Appraisement of damages
without the statements of loss and

99 And Application for such appointment. — The Deft. objected to the introduction of such evidence without the Application, statement, oaths & certificates. — But the Court over-ruled the objection and permitted the Plffs. to introduce in evidence the agreement to Appoint Appraisers, the oaths of appraisers and their assessment without the Application for such appointment, statements of loss sworn to, and certificates of appraisers. —

To the decision of the Court in overruling said objection and permitting the Plff to give in evidence to the Jury the agreement of appointment, of appraisers, their oaths & their appraisal without the Application for Appraisement-ointment of Appraisers, sworn statements & certificates of officers — The Deft. then & there objected and excepted. Which said agreement, oaths & appraisalment of damages is as follows, to wit: —

"New England Fire & Marine Insurance
Co. of Hartford, Conn. — Agreement.

18 —
+ It is hereby agreed by J. C.
Stewart and J. C. Scroggs of
Galesburg, Illinois, of the one part
And The New England Fire & Marine

49
100

Insurance Company of Hartford Conn., on
the other part, That A. H. Carpenter
& M. H. Billings (together with a third
person to be appointed by them, if nec-
essary) shall Appraise and esti-
mate at the true cash value
the damage by fire to the property
belonging to Stewart & Scroggs as
specified in the Accompanying
Schedule; which Appraisement and
estimate by them ^{or any two of them} shall be binding upon
both parties so far as regards such
Appraisement, it being understood that this
Appointment is without reference to any
other questions within the terms and
conditions of the insurance, being
so far only as regards the value of
or damage to such property as may
be found to have been saved in a
damaged condition which was
insured by Policy No 2, with the
said New England Fire & Marine
Insurance Co of Hartford Conn.

Witnesses }
11

Stewart & Scroggs

J. Farmer Genl Agent

State of Illinois }
County of Knox }

Declaration of Appraisers.

We the undersigned do solemnly
swear that we will act with
impartiality and fidelity in
making an Appraisement of the property

101

of the damage to the property of Messrs
Stewart & Scroggs insured by Policy
No. 2. in the New England Fire & Marine
Insurance Company of Hartford, and sav-
ed in a damaged condition. Agreeably to
the foregoing Appointment, and that we
will return to the said New England Fire &
Marine Insurance Company, a true and
perfect and a just and conscientious ap-
praisalment and estimate of damage on the
same, according to the best of our knowl-
edge, skill and judgment

M. H. Billings

A. N. Carpenter

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

{ L. S. }

Josias Grant
Notary Public }

We the undersigned after a careful
estimate of the value of the building
owned by Stewart & Scroggs & burned
on the 9th inst., do make the cost of
replacing the same to be \$1000.00.
And would deduct new for old

333.33
\$666.67

— Making the actual loss by said
burning to be Six Hundred & Fifty-six ⁶⁷/₁₀₀
dollars

M. H. Billings
A. N. Carpenter }

112

— L. Douglass was next called and sworn as a witness on the part of the Pffs, And testified that he made a tender of the Assignment of notes and mortgage by Stewart & Scroggs to the Defs. on the 16th day of January A.D. 1882 in Galesburg near Mc Roy's Bank. The tender was made to J. P. Dorman the agent for Defendant

Said witness upon cross-examination by the Defs. stated that he did not know whether said Dorman was authorized by the Insurance Company to receive it or not

~~The~~

The Plaintiff next offered in evidence the following assignment of Stewart & Scroggs to the Insurance Company; —

"— In the Snow County Illinois Circuit.
Bill in Chancery to foreclose mortgage,
Decree of Foreclosure, June 6th 1882.

Charles L. Long Complainant

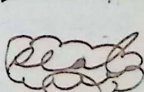
v.
William H. Marvel et al Defendants

In Consideration of the sum of Six hundred dollars to us in hand paid, we John L. Stewart and Joseph L. Scroggs, assignees of said Long of the above men-

183

tioned mortgage ~~and~~, And the notes it was
given to secure And of the decree
made in said suit by said Court
at said term, do hereby assign,
set-over and transfer unto the New
England Fire Marine Insurance
Company without recourse to us, the
above named decree, mortgage &
notes And do hereby fully authorize
& empower them to collect and receipt
for the same & to take such legal
steps at their costs as may be nec-
essary to collect the same; and we
do also hereby assign to said Company
all right which we may have to col-
lect from any incorporation or individual
any sum of money for or on account
of the burning the Boarding House and
saloon incurred by said Company by
Policy No. 2 dated March 19. 1889
And do also fully authorize them to
take such legal steps as may be necessary
without expense to us, to collect said
last mentioned sums of money & to
receipt for the same

Witness our hands and seals this
tenth day of January A.D. 1889

Jos. C. Stewart 
Joseph C. Scroggs 

— To the introduction in Evidence of
said Assignment marked "F"

114

The said Deft. objected. But the Court overruled the objection and allowed the Pff to give the same in Evidence. To the decision of the Court in allowing the same to go in Evidence the Deft, then & there in open court objected & excepted.

The Pff, next offered in Evidence an Assignment of Stewart & Scroggs to the New England Fire and Marine Insurance Company, marked "E", which is as follows:—

"In the Groves County Illinois Circuit Court, Bill in Chancery to Foreclose mortgage, Decree of Foreclosure, June 11th 1860 ———— & costs of Suit.

Charles L. Long, Complainant }

William H. Marvel et al, Defendants }

In Consideration of the sum of Six Hundred dollars to us in hand paid, we, John H. Stewart and Joseph H. Scroggs assignees from Charles L. Long, of the above mentioned mortgage and the notes it was given to secure and of the decree obtained in said

15 Stained upon said note and mortgage,
do hereby assign, set over and
transfer unto the New England Fire
and Marine Insurance Company, with-
out recourse to us, the above named
decrees, mortgage and notes, - and
do hereby fully authorize and em-
power them to collect and receipt for
the same. And to take such legal
steps at their own cost and expense
as may be necessary to collect the said
decrees so assigned to them.

Witness our hands and seals
this 15th day of July A.D. 1861

John C. Stewart (seal)
Joseph C. Searge (seal)

The words & figures "for \$1422 ⁵³/₁₀₀"
Erased before the execution of this instru-
ment G. C. Sampson

To the giving of the said assignment
in evidence, the Deft. objected. But the
Court, after hearing the evidence of
Gale set forth below, overruled the
objection and allowed the Plffs to give
the same in evidence. To its going
in evidence the Deft. then & there objected
in open Court objected and excepted
- The signature was not disputed to
either of said assignments

100

The Pff ~~then~~^{next} called Josiah Gale as a witness; who was sworn and testified after examining the assignment marked "E", "I have just read the assignment. A similar one was tendered to Norman about a year ago."

Seroggs read the paper in my presence. My impression is, it is a duplicate. — Cannot say whether it was obtained by Seroggs or not.

— Witness cross examined by Hylt, and swore — "That he could not say positively whether it was the same paper or not, but thought it was!"

Pff next called Henry Pond who testified that he knew George and Mary Whetmore, — Had known them for five years — Pass and live together as husband and wife, — Have examined the signatures on notes mortgage and Policy and they are their signatures.

The Pff next called J. C. Seroggs who was sworn on his 'voir dire' — who testified that he had no interest at present in the result of this suit — Can't say when

#6
107

I started with my interest. I did once
have an interest in this insurance and
property insured. — Assigned my
interest to the Insurance Co. — Think
I assigned my interest to Mr. Harland
— Can't say when I started with my
interest, to Mr. Harland, I assigned
my interest to him, — Was equally inter-
ested with Stewart. — Assigned by writ-
ing. — I think the first suit had
then been commenced — I had an inter-
est in the property at the time of
the fire — also in the notes and
mortgage, I think I assigned the notes
and mortgage to Mr. Harland, I had an
interest at the time of the fire and
when the proof of loss was made
— I never assigned my interest
in the Policy to any one. Never
assigned my interest to any one else
except to the insurance company, He
made the Proof of loss. I never as-
signed to any one else except ^{the insurance company}.
Don't remember I ever told Farmer
I was interested."

The next, objected to the said
Serrys being sworn in chief, and
testifying, on account of his interest in
the result of this suit. But the Court
over ruled the objection and allowed
the witness to be sworn in chief.

Testify. — To the decision of the Court in allowing the witness to testify the facts to the Jury? The Left, then & there in open court objected & excepted.

The said witness swore as follows: — "This was the Policy originally assigned to us by Whetstone. — I do not remember the exact date. The assignment was in writing, I do not know where it is, I never made any search for it. — Know it was in writing & attached to the Policy and is torn off. — The assignment was to Stewart & myself. — I know the notes & mortgage were assigned to us by Long. I do not know whether any assignment was made in writing, don't remember whether it was written. It was before the "issuing of the "renewal Receipt", I cannot state whether it was in writing or not, I never had any ^{conversations} ~~consultation~~ with Norman about it. — Before the assignment to us, Long had filed bill to foreclose and the suit went on in his name ^{to a decree}. I served "An Assignment of our interest in said "notes, mortgage and decree on Norman — I remember the erasure and date, "Mr. Gale was with me," — George Cross examined ^{by Left} and testified: "The Erasure in the assignment was made when Gale was with me. It was served the 13th day of July A.D. 1841, The copy produced is the one served on Norman."

1888 - Belote Cooley was called and sworn for Plaintiff for the purpose of showing that an endorsement of a credit on one of said notes had been altered since the computation of the amount due thereon was made by adding the letter "s" to the end of the word "note". The notes above mentioned were shown to the witness & he stated: - "I was special master in Chancery in the case of Charles Long Complainant, against William H. Marvell and others, lately pending in this Court to foreclose ^{the mortgage} referred to. The case was referred to me, - I cannot say positively whether said "s" has been added since the computation I made, - I did not notice it then. - I don't think it was there."

J. C. Scroggs was recalled and the Plaintiff showed to the witness an assignment from Long to Stewart and Scroggs marked "B" which is the following words:

"Know all men by these presents that I Charles L. Long, of the city of Galesburg, County of Knox and state of Illinois, The assignee of a certain mortgage given by William H. Marvell to John Riggins to secure the payment of two thousand dollars, dated

112

Nov. 6th 1836, recorded in volume 4
of "Mortgages", page 441 in the Record-
er's Office in the County of Snodgrass
and state of Illinois - and by the
said John Riggin assigned to me,
dated _____, in consideration
of one dollar to me paid by Stewart
& Cropps, the receipt of which is
herby acknowledged, do hereby grant
and assign unto the said Stewart
& Cropps, his heirs and assigns
The said mortgage, the estate
therein mentioned and the debt
secured thereby, To have and to
hold the same unto the said Stewart
& Cropps, their heirs and assigns
to them and their use and benefit
forever, subject nevertheless to re-
demption according to law.

Witness my hand and seal
this seventh day of July and
1836

Charles Long seal

State of Illinois }
County of Snodgrass }
City of Calceburg }

J. J. Cropps a
Notary Public in and for said City,
County and state, do hereby certify
that Charles L. Long is personally
known to me as the same person
whose name is subscribed to the
of me pronounced above, dated

111

"forgoing assignment, appeared
 "before me this day in person and
 "acknowledged that he signed,
 "sealed and delivered the said instr-
 "ument of writing as his free and vol-
 "untary act for the uses and purposes
 "therein expressed

"Given under my hand and official
 "seal this seventh day of July A.D. 1860
 " { L.D. } J. B. Boggs
 " Notary Public } "

— The witness said: "I do not
 "remember of seeing this assignment be-
 "fore. — I recognize the signature of
 "Long, it is his signature, the assign-
 "ment was written by J. B. Boggs. We
 "made the purchase from Long in
 "January 1860 & the assignment
 "made certainly not later than Febru-
 "ary 1860."

Cross Examined, — "Said
 "I recognize the signature & this
 "assignment, but do not remember
 "of any such assignment being made
 "to us. It is Long's hand writing."

J. B. Boggs being re-called, said
 "— The assignment was made in
 "my office & acknowledged before and
 "certified by me. Mr. Stewart was

112

present & I think it was delivered
to Stewart & George. That is, the
assignment marked "G". There
was a prior Agreement between, Long,
Stewart & George About the sale to
them which was destroyed, I think
when the assignment "G" was taken.

George L. Langford was sworn
for Pff and on examining the
assignment marked "G", said:-
"I have had this paper over a year
- Received it from Mr. Stewart,
"It was delivered to me in May
"or June A.D. 1861."

- The Plaintiff then offered in Evidence
the assignment marked "G"
& the Defendant objected to the same
being read in Evidence. & the
objection was over-ruled & the de-
fendant excepted to the ruling
of the Court in over-ruling said
objection & the Assignment
was read in Evidence

Here the Plaintiff rested.

and here

113

The Deft. comes & moves the court for a Non-Suit because the evidence did not show any cause of action. The court over-ruled the motion for non suit. To which decision the deft. then & there in open court objected and Excepted.

The Deft. to maintain the issue on their part, of the Company offered in Evidence the Application for Policy, with conditions attached to the Policy, which were given in Evidence without objection, Which are as follows:—

Application

"New England Fire And Marine Insurance Co. of Hartford Conn. No —
Survey of dwelling in the city Galesburg
County of ~~Spot~~ and state of Illinois.

The estimated value of each building and of Personal Property and the amount to be insured on each must be stated separately.

When property is contained in two or more buildings, the value and amount to be insured on each must be stated separately.

When insurance is wanted on personal property, the same description of the building is required as if insurance is wanted on the building.

Application of — of Galesburg for

114

insurance against loss or damage by fire, by the New England Fire & Marine Insurance Company in the sum of nine hundred dollars on the property specified: The value of the property being estimated by the Applicant.

On their mortgage interest on building \$9,00.00 — Valuation \$13,00.00 rate 1.

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

Survey of
Premises

1. Building — where situated? — Street and no.. Is it stone, brick or wood? How many stories high? When built?

1 — On Depot st. (West side). — Wood — part 1, & part 1/2 story. — 1867 — 4.

2 Walls — Are the division walls of brick. are they entire? Do they rise above the roof? —

2 — Situated on lot three Block 52 in Galesburg.

3 3 Q. What is it covered with? Is there a scuttle and stairs to it?

3 — Shingle. — No.

4 — Has it a lightning rod? If so, how high does it rise above the roof? Does it descend into the ground three feet?

4 — — — — —

Appreciation of — — — — — of Galesburg for

5 - what fuel is used? - How are the ashes disposed of? -

5 - coal and wood. - Thrown out.

11/8

6 - are the stoves and pipes properly secured and will you engage to keep them so?

6 - Yes. - Yes.

4 - do the pipes enter a chimney? - and is it built from the ground? do pipes pass thro' wood partitions or floors? If so, how secured? - 4 - Yes. - No. - Yes. Tin ventilator

8 What material is used for lights? - 8 - Fluid.

9 - For what purpose is the building used? How many tenants?

- 9 - Dwelling - keep some boarders

10 - distance and materials of other buildings within 100 feet of the one insured? And how occupied? -

- 10 - 2 tenants now - is not to be long. South 30 feet is a 1 1/2 story building not used. East 5 rods is a 1 story warehouse

11 - What other insurance is there upon the property, and at what office?

- 11 - None.

12. Is the property mortgaged and to whom?

Amount? Is there any insurance by the mort-
gages? -

- 12 - The mortgage interest is what we insure

1180 13 - Is any other party interested in the prop-
erty.

- 13 - Yes. -

14 - Have you ever suffered any
loss of property by fire? - If so, were
you insured? - And in what
office?

14 - No.

15 - What are the facilities for extin-
guishing fires in the town?

15 - Engine, Hook & Ladder Co.

If the risk be on merchandise.
16 How often do you take an inventory?
What was the date and amount of the
last last?

16 -

17 - Friction Matches kept for sale
? If so, are they kept in metal or earthen
vessels and not exposing other prop-
erty? It is agreed that phosphorus
is not to be kept on the premises.

- 17 - No.

And the said
Applicant thereby covenants and
agrees to and with said Company

#6
117

That the foregoing is a just full and true exposition of all the facts and circumstances in regard to the condition, situation and value of the property to be insured so far as the same are known to the Applicant and are material to the risk

Dated March 12th 1889

M. A. Wetmore

Charles Long

Applicant
" "
" "

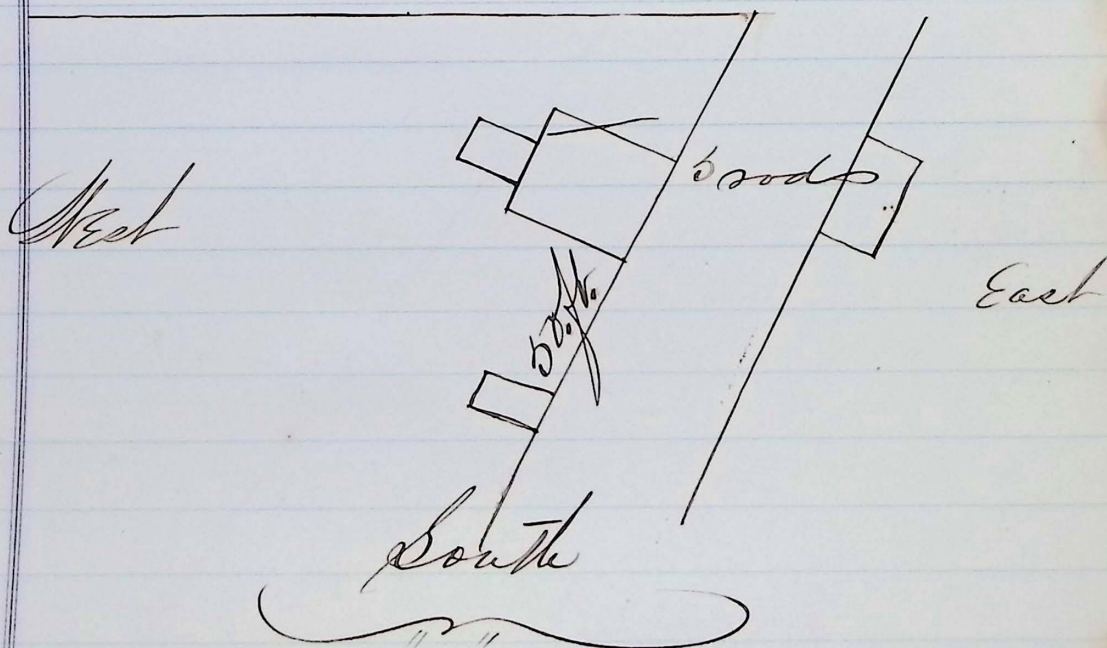
For 12 months at 1 cent. Premium \$9. —

(Make a diagram of the premises on the other side of this sheet) —

Diagram.

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

North.



Conditions of Insurance attached to the Policy.

118

1. Application for insurance on property must be in writing and must specify the construction and materials of the buildings to be insured or containing the property to be insured; by whom occupied; whether

119

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 in relation to the insurance of goods and merchandise, whether or not they are of the description denominated hazardous, extra-hazardous or included in the memorandum of special hazards. If any person insuring any building, goods or other property in this office, shall make any misrepresentation or concealment or omit to make known any fact or feature in the risk which increases the hazard of the same, or over value the same, or if after insurance is effected either by the original Policy or by the renewal thereof, such building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, or if the risk be increased by any means whatever within the control of the assured, such insurance shall be void and of no effect. If during the insurance the risk be increased by the erection of buildings or by the use or occupation of neighboring premises or otherwise, or if for any other cause the Company shall so elect it shall be optional with the Company to terminate the insurance, after notice given to the assured or his representative, of their intention to do so, in which case the Company will refund

a rateable proportion of the premium.

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

117
121

111. Property held in trust or on commission, must be insured as such; otherwise ~~such~~ ~~property~~, the Policy, will not cover such property; and in case of loss the names of the respective owners shall be set forth in the preliminary proofs of such loss together with their respective interests therein. Goods on storage must be separately and specifically insured. If the interest in property to be insured, be a leasehold interest, or other interest not absolute, it must be so represented to the Company and expressed in the Policy in writing, otherwise the insurance shall be void. Note. - By "property held in trust" is intended property held under a deed of trust or under the appointment of a court of law, or property held as collateral security; in which case this Company shall be liable only to the extent of the interest of the assured in such property.

IV. Policies of insurance subscribed by this Company, shall not be assignable without the consent of the Company Expressed by endorsement made thereon.

121 In case of assignment without such consent whether of the whole policy, or of any interest in it, the liability of the Company in virtue of such policy, shall thenceforth cease; and the Company reserves to itself the right to elect either to consent to the transfer or return a ratable proportion of the premium and cancel the Policy. In case of claim for loss or damage on a Policy assigned, where there is no actual sale or transfer of the property insured, proof of loss shall be made by the assured in conformity with the conditions of this policy in like manner as if no assignment had been made; otherwise this policy shall be void and of no force or effect whatever and all liability on the part of this company shall cease.

V. Notice of all previous insurance upon property insured by this company, shall be given to them and endorsed on this Policy or otherwise acknowledged by the company in writing at or before the time of their making insurance thereon; otherwise the Policy subscribed by this company shall be of no effect. And in case of subsequent insurance upon property insured by the company, notice thereof must also with all reasonable diligence be given to them.

122

to the end that such subsequent insurance ~~on property~~ may be endorsed on the Policy subscribed by this company or otherwise acknowledged in writing; in default where of, such Policy shall thenceforth cease and be of no effect. And in all cases of insurance, this company shall be liable only for such rateable proportion of the loss or damage happening to the subject insured, as the Amount insured by this company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.

VI.

In case of fire or loss or damage thereby or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving ^{and} preserving the property. And if they shall fail so to do this company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect. And it is mutually understood that there can be no abandonment to the insurers of the subject insured. This company will not be liable for loss ~~and~~ or damage caused by lightning except that which results from fire that may ensue therefrom; nor for any loss either by fire or otherwise occasioned by the explosion of a steam-boiler, or occasioned by camphene or by the explosion of gun powder or any other explosive substance.

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

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

IX. Persons sustaining loss or damage by fire are forthwith to give notice thereof in writing to the company or its agent and as soon after as possible they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath of affirmation declaring the said account to be true and just showing also whether any and what other insurance has been made on the same property, giving a copy of the written portion of the policy of each company; what was the whole cash value of the subject insured; what was their interest therein; in what general manner

12 §

(as to trade, manufactory, merchandize or otherwise) the building insured or containing the subject insured and the several parts thereof, were occupied at the time of loss and who were the occupants of said building; And when and how the fire originated so far as they know or believe. They shall also produce a certificate under the hand and seal of a magistrate, Notary Public or Commissioner of Deeds (most contiguous to the place of the fire and not concerned in the loss as a creditor or otherwise or related to the insured or sufferers) stating that he has examined the circumstances attending the fire, loss or damage alleged and that he is acquainted with the character and circumstances of the insured or claimant and that he verily believes that he, she or they have by misfortune and without fraud or evil practice sustained loss and damage on the subject insured to the amount therein ~~insured~~ mentioned which such magistrate, notary Public or Commissioner of Deeds shall certify. When merchandise or ~~any~~ other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting ^{and} arranging the various articles according to their kinds, separating the damaged

125 from the undamaged goods; and shall cause
a list or inventory of the whole to be made
showing the quantity and cost of each
kind. The amount of damage shall
then be ascertained by the examination
and appraisal of each article, by disinter-
ested appraisers mutually agreed upon
one half of the appraisers' fee to be paid
by the insurers; and shall if required
submit to an examination under oath
by the agent or attorney of the Company
and answer all questions touching his
claim or their knowledge of anything
relating to such loss or damage or to
their claim thereupon and subscribe
such examination, the same being re-
duced to writing; and whenever re-
quired the insured or person claiming
shall produce and exhibit his books of ac-
count and other vouchers to the insurers
or their agent at the office of this company
in support of the claim and permit
extracts and copies thereof to be made
; and shall also exhibit to any persons
named by the Company, and shall per-
mit to be examined by them any property
damaged on which any loss is claimed, or
any property which was insured by this
Policy, and until such declarations, cer-
tificates and proof, full and satisfactory
to the company are produced and such ap-
praisals and examination of property

120

exhibit of Books are permitted by the Claimant, the loss shall not be payable. Re-insurance for any other Company & be on the basis of joint insurance liability with said Company and in the event of loss, this Company & pay their pro-rata proportion of said loss. All fraud or false swearing shall cause a forfeiture of all claims on the insurer and shall be a full bar to all remedies against the insurers on this Policy.

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

128 shall be binding on the parties. Payment of losses shall be made in Sixty days after the loss shall have been ascertained, and full and satisfactory proof received by the company.

XI Insurance once made may be continued for such further time as may be agreed on the premium required therefor being paid and endorsed on the policy, or a receipt given for the same; And all insurances original or renewed shall be considered as made under the original representation in so far as it may not be varied (by a new representation in writing which in all cases it shall be incumbent on the party insured to make where the risk has been changed either within itself or by the surrounding or adjacent buildings; and if at ~~the~~ or before the time of renewing any Policy of Insurance on property where the risk has been increased by the erection of buildings or by the use or occupation of the premises insured or of the neighboring premises, the assured shall fail to give information thereof, said Policy and renewal shall be void and of no effect

XII, - When a policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part

and portion of such Policy and warrants
on the part of the insured.

XIII. 128 Where property insured by this Com-
pany is damaged by removal from a build-
ing in which it is exposed to loss
by fire, said damage shall be borne
by the insured and the insurers
in such proportion as the whole sum
insured bears to the whole value of
the property insured of which proof
in due form shall be made by the
Claimant.

XIV, The Company will not be answerable for
any loss arising from the use of open
lights in barns or where shavings are
made, or of fires in buildings un-
provided with good and substantial
stone or brick chimneys, or in Con-
sequence of neglect or deviation from
the laws or regulations of police made
to prevent accidents from fire, in
places where laws and regulations on that
subject exist. In case of loss the
Assured shall Assign to this Company
all his right to recover satisfaction
therefor from any other person or persons
town or other Corporation. with a power
of attorney to sue for and recover the
same at the expense of this compa-
ny. And if insured as a mortgagor
he or they shall assign to this Company

129 The mortgage upon the premises insured together with the debt secured thereby or so much thereof as will be sufficient to pay said loss, And a refusal to execute such assignments shall operate to discharge this Company from all liability under this contract

XV. It is furthermore hereby expressly provided that no suit or action of any kind against said Company for the recovery of any claim upon, under or by virtue of this Policy, shall be sustainable in any Court of law or Chancery, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur, and in case any such suit or action shall be commenced against said Company after the expiration of twelve months next after such loss or damage shall have occurred the lapse of time shall be taken and deemed a conclusive against the validity of the claim thereby so attempted to be enforced

Classes of Hazards.
Not Hazardous. Staple foreign Dry Goods

in packages and staple domestic Dry Goods
in stores where no hazardous merchandize is
kept and household furniture in dwelling
houses, may be insured at 5 cents per
\$100, in addition to the rate of the building,

Hazardous

The following trades and occupations, goods, wares
and merchandise are deemed hazardous
and subject the building and all its contents
to an additional charge of 10 cents per
\$100. ; they are ; china or earthen or glass
ware or plate glass in boxes, crates or
casks ; eating houses or refractories
fire-crackers in packages, flax in bales
grocers stock, gutta percha manufac-
tures, hat ironing or trimming or pres-
sing, hay pressed in bundles, hemp in
bales, India rubber manufactory
Manilla grass in bales, oil, porter houses
rope in packages, sail-making, sugar-
making, sisal grass in bales, spirituous
liquors in bales, sugars, sulphur, tallow
wine-dealers stock (not including wine
in glass unpacked) and wool

The following are considered hazardous
on account of their liability to damage and
are charged 10 cents per \$100, in ad-
dition to, but do not increase the rate
of the building ; they are boots and shoes
brushes (stocks of), card printing, coffee,
cotton bating and wadding, dry goods
(general stocks of) flour, fur and pelts

131
in packages, hardware and cutlery, hides and leather, indigo, looking glasses in boxes, metals (in bars, rods, pigs or sheets) paints ground in oil, paper hanging, paper in reams, potash, rice, spices, tailors stock and ready made clothing, tea, threshed grain, tin or sheet iron or copper ware, wine in casks wine in glass in packages, window or plate glass in boxes And generally all other stocks of merchandise (in buildings where fire heat is not used for manufacturing) not elsewhere enumerated.

Extra Hazardous

The following trades and occupations, goods wares and merchandise are deemed extra hazardous and subject the building and all its contents to an additional rate of 20 cents per \$100. & they are:— Alcohol, apothecaries' stock, band box and paper box making, basket bleaching or making, basket makers' stock, blacksmithing, block and pump making, box repairing, braces turning, and working, brush makers stock, cabinet makers stock, carving, china, earthen or glass ware, or looking glasses with packing or unpacking, chocolate making, color-men's stock, coopering, copper plate printing, cotton in bales, cotton broker's sample, daguerreotyping, drugs (importers stock, with out inflammable acids or phosphorus)

139

Essential oils, gilding, gutta-percha goods,
gun repairing, hat finishing, (with use of
fire heat to steam and block the bodies, india
rubber goods, lamp manufacturing, lime
unslacked, liquor-bottling, lithographing,
Morocco manufacturing, musical instru-
ment makers' stock, oakum in bales, paint-
ers stock, perfumer's stock, pitch, plumb-
ing and pewtering, pocket book making,
printing of newspapers and Engravings
sags and junk-shop stock, rosin and
ship chandlery, spirits of turpentine, tar
tin or sheet iron or copper working, turning
of wood, turpentine, umbrella making,
upholstery manufacturing, varnish and
wooden ware sellers' stock.

The following are considered extra-
hazardous on account of their lia-
bility to damage and are charged 20 ct
per \$100, in addition to, but ~~not in-
creasing~~ do not increase the rate of the
building; they are:— Artificial flowers,
book sellers' stock, cabinet ware, china
earthen or glass ware unpacked, con-
fectioner's stock, daguerreotypists' stock
furs unpacked, jewellers' stock, lamp
sellers' stock, liquor in glass unpacked
milliners' stock, musical instruments and
printed music, needles, optical- and
mathematical- instrument makers' stock
pictures and prints, precious stones
pocket-book makers' stock, silver smiths
stock, silver and plated ware,

shaw goods, stationers' stock, toy shop-
keepers' stock, watch-makers' stock
and tools, window or plate glass un-
packed and wine in glass unpacked

Memorandum of Special Hazards.

Acids (Nitric, sulphuric, muriatic and other
acids causing ignition) Bakeries, bark-mills
bleaching works, Bind-makers' shops, carpenters
shops, bookbinderies, boatbuilders' shops,
bras foundries, breweries, brimstone works
brush manufacturies, cabinet makers' shops, chain
makers' shops, carpenters' shops, candle manu-
facturies, camphine on sale, copper smiths'
shops with forges, copper and spice mills
chemical laboratories, coach-makers' shops
comb-manufacturies, confectionary manufacturies
corn kilns, cotton mills, cotton presses, cotton
unpacking, distilleries and rectifying estab-
lishments, dyeing establishments, druggist
stock (wholesale) drug and spice mills, ether
fur dressing establishments, fire-work, fur
work establishments manufacturies,
flax mills, floor cloth manufacturies,
fringe manufacturies, fulling mills,
flax unpacked, gas manufacturies,
grate manufacturies, grist or flouring
mills, gun manufacturies, gun powder
hat manufacturies, hay unpacked,
house building or repairing, hemp
unpacking, india rubber or gutta percha
manufacturies, ink manufacturies, iron

134

founderies, ivory black and lamp black
 manufacturies, lime yards and shed
 lively stables, lumber yards, looking
 glass and picture frame manufactu-
 ries, machine shops, Mahogany yards.
 Malt houses, Matches manufactories
 metal mills, musical instrument manu-
 factories, oil-boiling houses, oil-cloth man-
 ufactories, oiled-clothing manufactories
 oil mills and manufactories, Omnibus
 stables, plating, plated ware manu-
 factories, packing buildings and yards
 paper mills, paper-hanging manufactories
 percussion-cap-manufactories, perfumery
 manufactories, planing, or grooving, or
 moulding manufactories mills, powder
 mills, printing of books and job-printing
 phosphorus, rope and cordage man-
 ufactories, Safe (iron) manufactories
 store manufactories, ~~etching~~ salt-
 petre, sack maker's shops, saw mills
 soap manufactories, Silver-smiths
 manufactories, snuff mills, spirit
 gas manufactories and spirit gas
 on sale, ~~Stables~~
 slave yards, steamboats, steam en-
 gines in use, sugar refiners, tobacco
 manufactories, type and stereotype man-
 ufactories founderies, tallow melt-
 ing establishments, tanneries, tar boil-
 ing houses, Theatres and other places
 of public exhibition, timber yards, tur-
 pentine distilleries, varnish manufactories

135 "Wool mills, wheelwrights' shops, and generally,
"all mills and manufacturing establish-
"ments and all trades and occu-
"pations requiring the use of fire heat
"not before enumerated.

"Camphene, spirit gas or "burning fluid"
"when used in stores, warehouses, shops
"or manufactories as a light, subjects
"the goods therein to an additional
"charge; and permission for such
"use must be endorsed in writing
"on the Policy.

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

"Fences and privies also store fur-
"niture and fixtures must be separate
"ly and specifically insured."

Dr. also gave in Evidence the The
statement of Stewart and Seroggs, sworn
to by them, with the certificate attached,
attached to the appraisement of appraisers
and their Assessment. Which is as
follows:—

To the New England Fire and Marine
Insurance Company of Hartford Connec-
ticut:-

186 State of Illinois }
County of Knox }
City of Galesburg } \$5.

Be it known that on
the 29th day of March A.D. 1859, be-
fore me, James P. Boggs, a Notary
Public legally qualified for the city and
County aforesaid, personally appeared
John C. Stewart and Joseph C. Scroggs
who being duly sworn according to law
declare under oath, that the New Eng-
land Fire and Marine Insurance Company
of Hartford, Connecticut, through its
Agency at Galesburg, did on the 19th
day of March 1859, issue to W. A. Wet-
more and Charles Long, their Policy
of insurance number two (2), the
~~within~~ written body of which with its im-
mediate contents and written endorsement
and statements of renewal of said policy,
are as below specified, said insurance
terminating on the 24th day of March A.D.
1860 at noon.

No 2.

\$900.

By this Policy of insurance The New
England Fire and Marine Insurance com-
pany in consideration of nine dol-
lars to them in hand paid by the
Assured herein named, the receipt
whereof is hereby acknowledged,

187

Insure M. A. Wetmore and Charles Long, of Galesburg, Knox County Illinois, against loss or damage by fire to the amount of \$900. for the period of one year, on their mortgage interest on a boarding house on the west side of Depot St. in said Galesburg on lot three (3) and Block 52. And the said company for the consideration aforesaid, do here by promise and agree to make good unto the assured, their executors, administrators and assigns all such loss or damage not exceeding in amount the sum insured as shall happen by fire to the property as above specified from the 1st day of March 1859 (at 12 o'clock at noon) until the 1st day of March 1860 (at 12 o'clock at noon) &c, &c.

In witness whereof the New-England Fire & Marine Insurance Company have caused these presents to be signed by their present ^{id} and attested by their secretary, in the City of Hartford.

Signed N. M. Waterman ^{President}

Signed Geo. H. Jewett Secretary

Countersigned at Galesburg this 19th day of March 1859

J. P. Norman Agent

138

The New England Fire & Marine Insurance Company, hereby consent that the interest of M. A. Wetmore in the within Policy, subject to all the terms and conditions therein mentioned and referred to, be assigned to Charles Long, Galesburg March 31, 1839.

Signed J. P. Norman, Agent

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

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

Sealed & delivered in presence of
 Signed { M. A. Wetmore
 { G. H. Wetmore.

January 26, 1840. The said Policy number two was regularly assigned in writing to Stewart and Crosga by Charles Long which assignment was attached to said Policy which has been lost, which assignment is regularly noted on the books of the Galesburg Agency.

New England Fire & Marine Insurance Co. of Hartford, Renewal Receipt No. 5 Galesburg Agency.
 Received of Stewart & Crosga

139

Seven $50/100$ dollars, being the premium
On six hundred dollars insured un-
der Policy No, two, which is here-
by continued in force for one year, to-
wit, - from the 15th day of March 1860
until the 15th day of March 1861
At noon

(Signed) N. M. Waterman Pres.

Geo H Jewett Secretary

Countersigned at Galesburg this 19th day
of March 1860

J. P. Norman Agent

And beside that Insurance there was
no Additional insurance made there-
on. The whole cash value of the
property so insured, being our
mortgage interest, amounted on the
14th day of March 1860 to the
sum of fourteen hundred and
twenty two $53/100$ dollars And interest
up to this date. And there has
been no payment made on said
mortgage so insured since the
14 day of March 1860.

The building prior to our purchasing the
Mortgage, we do not know by whom or whether
it was occupied. At the date of the assign-
ment of Policy to us And also the renewal
on the 15th of March 1860 And until
the month of April, the house was vacant.

137
140
Michael Huestes occupied it for some
five months. It was occupied by —
Gulton until the month of January as a
boarding house and saloon and by
John Kempsey up to the 15th day of
February — for the same purpose. From
and about the 15th of February up to
the time of the fire, it was vacant, and
unoccupied, which fire occurred
on the night of the 9th day of March
near near twelve o'clock, as we can
learn upon an inquiry and how it orig-
inated is unknown to us. The said
building was totally destroyed.

That the statement of the particu-
lars of the account of loss, and facts
set forth in the above statement are
believed to be just and true and
the mortgages specified above belong
to us

John C. Stewart
Joseph C. Scroggs

John C. Stewart and Joseph C. Scroggs
having first been duly sworn accord-
ing to law and subscribed the preceding
Declaration and Affidavit, I have in witness
thereof set my hands and seal of office
in the state, county, city and date afore-
said

{ J.C. }

J. C. Scroggs
Notary Public

State of Illinois
County of Knox } ss
City of Galveston }

141

I, J. P. Foggs
a Notary Public in and for said
city and county, residing most
contiguous to the property of John C.
Stewart and Joseph C. Scroggs in-
sured as set forth in the preceding
affidavit, certify that I am not con-
cerned in that loss or have any
claim either as a creditor or other-
wise or related to the insured or
sufferers, And that I am acquaint-
ed with the character and circum-
stances of Stewart and Scroggs, having
made diligent inquiry into the facts
set forth in the foregoing statement and
believe and know that they really by
misfortune, without fraud or evil
practice, sustained by the described
fire, loss ^{and} damage to the amount
of six hundred dollars, the sum
stated in the affidavit of loss.

In testimony whereof I have here
unto set my hand and official
seal this 29th day of March 1864.

J. P. Foggs
Notary Public.

142

The Defendant then swore as a witness Henry Moore; who testified that he knew the property in controversy. Now what the building was used for at the time of the fire. Premises had been used for a saloon from July 1860 to the later part of the winter of 1861. Beer, candy & such articles as are usually kept in a saloon were sold there. They used in the building glass lamps with fluid.

Houston opened first in part of the building and kept a shoe shop. A Swedish man kept in the other part of the building a saloon. Then Sutton occupied it. I have seen beer there. Once found a bottle of whiskey in the saloon. I had a warrant for Sutton for selling whiskey and a search warrant. And there was a small room in the rear of the building used as a stable, - a part of the same building. - Have seen hay in that small room. A horse was kept in it during the winter of 1860 & 1861 about six months.

There was hay and grain in the room when the horse was kept for feed. There was a sort of partition or some boards up in the room to keep the horse in. - I have seen a strange woman there.

Women of bad character at different times have seen them there often. I was marshal of the city. Have seen the

The women there as late as ten o'clock at night. Their character was bad.

143

Witness Cross-Examined by Plaintiff testified that "Button" was there from four or six months. Don't know whether the same women remained there all the time, Don't think he kept them there, Kempsey was the last occupant. The building had been vacant for three or four months before the fire.

Houston kept there for a short time. Button was there six months, Should think he went there in the fall. Stable joined in rear of the building, a few boards were put up in the rear room to keep the horse in. It was a continuation of the same building. Was there in Dec & Feb. Button acknowledged liquors had been sold there. Have seen beer sold there. Know of cigars being sold there. Button called the horse his own. I suppose he was there as a tenant. Women were often there. I considered them such as would take the advantage. —

Liquors were precluded being sold in the city. Beer was sold there. The sign on the house hung out as a "Boarding House".

The next called Jefferson Farmer

144
Who was sworn on his voir dire.
I stated: - "I have no interest in
The result of this suit. - Am general
Agent of the company. Have no
contingent interest whatever.

The witness was then sworn in chief without
objection and testified that he received
the letter marked "H" from Mr. Norman
purporting to come from Lauphere
One of the Atty's for Plaintiff; which
is as follows: -

Galesburg July 23^d 1882
Jefferson Palmer Esq
Genl Agent A.E. Ins. Co.

Dear Sir: -

Your favor to Mr. Norman
in regard to the claim of Stewart & Sonzgo
has been considered by them and they
have directed me to answer it and to
accept of your proposition on condition
that they are not to be ~~paid~~ called on
to pay any of the court costs in obtain-
ing the decree. They have already com-
menced suit against your company
which will be withdrawn if this arrang-
ment is completed

Respectfully Yours
C. L. Lauphere

"I saw Stewart in July 1882. Told
him it was necessary for him to

145-

Assign this mortgage - interest to the company And I received the letter from Mr. Lauphere in reply and received the assignment in in Nov. 1861. An Assignment by Stewart and Scroggs dated Nov. 23rd 1861 (marked "A") which is as follows:-

"In the Knox County, Illinois Circuit Court.
 "Bill in Chancery to foreclose Mortgage
 "Decree of Foreclosure. June 6th 1860
 "Decree for \$ 1422 53/100 & costs of suit.

Charles L. Long, Complainant

William H. Marvel ^{et al} Defendants

In con- sideration of the sum of six hundred dollars to us in hand paid by the New England Insurance Company we, John C. Stewart and Joseph C. Scroggs, assignes of the above (men- tioned ~~of the above mentioned~~ mort- gage and notes and of the ^{said} decree obtained in said court, do hereby assign transfer And set over unto the said Insurance Company without recourse to us, the above mentioned decrees, notes & mortgage And do hereby fully authorize And Empower the said Company to collect and receipt for the same

Witness our hands and seals

146
this 20th day of November A.D. 1861
Jno. C. Stewart (seal)
Joseph C. Scroggs (seal)

— I never saw the other assignments of the mortgage interest or decree, nor the One of July 13th 1861. I had a conversation with Stewart & he procured an abstract of title and said he could not assign the mortgage; that he had no interest in it and that I had no right to demand it. I should have known if one had been tendered the Company in July 1861 for I was at Gallesburg and saw Mr. Stewart there after the 13th of July 1861. I think towards the last of the month. Stewart refused to assign mortgage interest in March A.D. 1861. Also in July A.D. 1861.

Witness cross examined by Piff, & stated that: — "Stewart denied the right of the Company to demand the assignment. He said we had no right to claim it. I never submitted or showed the assignment sent me to the Company. He did not have an absolute title. I received the assignment the latter part of the month by mail.

Am not certain whether it was from Lauffer, Stewart & Scroggs or Norman.

I have seen Mr Waterman's letters
for four years, I have never seen
him write.

147

Next called & sworn Merwin
Ransom, who testified that his testimony
corroborated Mr. Farmer so far as Ste-
wart's denying the right of the Company
to demand an assignment of the notes &
mortgage, Also that Stewart said he
could not assign the mortgage, not hav-
ing any absolute title. Farmer, Norman,
Stewart, Ford and myself were pres-
ent at this conversation which I think
was in March 1861

The next offered ^{and gave} in evidence the assign-
ment marked "I" above referred to
and set out in this Bill of Exceptions
with the evidence of Mr. Farmer, the
signatures being admitted and also
gave in evidence the letter of G. C.
Laupher referred to & set out in this
Bill with evidence of Mr. Farmer &
marked "H", the signatures being
admitted

The next here rested.

148

The Plff, then offered in Evidence the letter of A. M. Waterman, the President of the Company, which — permitted to go in evidence, no objection being made to the letter; in the following words, dated June 19. Was marked "K."

" Hartford Conn, June 19th 1881
" Geo. C. Laphere Esq;
" Galesburg Ills }
"

Dear Sir:

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

Truly Yours

A. M. Waterman
Pres

149
The next then offered in evidence
the letter of J. Farmer General Agent
of Nesh. without objection. Which letter
is marked "M" & is as follows:-

Chicago Full Agency }
July 14, 1861 }
J. P. Norman }
Galesburg Ills }

Dear Sir:- We find it best
to avoid litigation if possible and
therefore wish you to enquire of Messrs
Stewart & Cropps whether they will as-
sign and transfer to the New England
Fire & Marine Insurance Company
of Hartford Conn., the notes & mortgage
and also the decrees of ^{sale in} chancery
pertaining to the property on which
they hold Policy No. 3, in said
Insurance Company. On condition
of said Insurance Company paying them
the sum of six hundred dollars, their claim
thereby, and of giving them a bond
to refund to them all over the sum
of six hundred dollars that may be realized
from said notes, mortgage & decrees of sale
Very truly yours Jefferson Farmer
Genl Agent

This was all the evidence in the case.

The Plaintiffs then asked the court to instruct the Jury as follows: -

157
Given

5th - "The jury is instructed that the hitching of a horse in the building would not make the building more hazardous under the conditions of insurance unless in addition it was used as a common stable & thereby brought within the condition of the Policy."

- To the giving of said instruction the said Def. then and there in open court objected and excepted.

The said Def. then asked the court to ~~instruct~~ instruct the Jury as follows: -

Refused

5th - If the jury believe from the Evidence that the mortgage interest in said premises & policy at the time of the fire had been assigned to Stewart & Scroggs & the assignment of the Policy consented to by the Insurance Co., and that the Pffs Whetmore and Long had no interest in said mortgage or decree at the time of the fire, the Jury will find for Defs.

6th - If the jury believe from the evidence that the Pffs Long and

Refused {
1871
Mortuors were the owners of the said mortgage interest insured in said premises at the time of the fire & that upon this trial they have not proven that they made the proofs & the left as stated in Instruction No. 4, the Jury will find for the left.

Refused {
5th If the jury believe from the evidence that the said Stewart & Scroggs refused to make an unconditional assignment of said mortgage interest insured to left at any time after the fire, the Jury will find for left.

which said instructions Nos. 5, 6 & 8 the Court refused. And the left then & there in open court objected & excepted to the decision of the court in refusing to give said instructions Nos. 5, 6 & 8.

The left also asked the court to instruct as follows:—

3d "If the jury believe from the evidence that on the 23d day of July 1861 [or at any other time after the fire] the said Stewart & Scroggs [by themselves or] through their atty C. C. Humphreys refused to assign to left all their interest without

Modifications by the court in
152
brackets

imposing [unreasonable] conditions upon said debt, in said assignment to said debt, then the Jury will find for the debt unless they believe from the evidence that the debt, afterwards and before the commencement of this suit, accepted an assignment of the mortgage interest in said property. [But the fact that Stewart and Seroggs insisted that they were not to be called on to pay any of the court costs in obtaining a decree on the mortgage was not an unreasonable condition within the meaning of the first part of this instruction]

But the Court refused to give instruction No. 3 as asked but gave the same as modified by the court as follows:-

3d If the Jury believe from the evidence that on the 23rd day of July 1861, or at any ^{other} time after the fire, said Stewart and Seroggs by themselves or through their atty G. L. Lamphere refused to assign to said debt, all their interest without imposing unreasonable conditions upon said debt, in said assignment to said debt, then the Jury will find for the debt, — unless they believe from the evidence that the debt afterwards and before the commencement of this suit accepted an assignment of the mortgage interest in said property. But the fact

Given

185

"That Stewart & Crozys insisted that
"they were not to be called on to pay
"any of the court costs in obtaining a
"decree on the mortgage was not an
"unreasonable condition within the
"meaning of the first part of this in-
"struction."

To the refusal of the court to give
instruction No. 3, as asked and to
the giving of the same as modified
by the court, the Deft. then & there
in open court objected & excepted

The Court then, on motion of Deft, gave
instructions number 1 & 2 & 4 as follows:

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

2nd If the Jury believe from the evidence
that spirituous liquors were kept in
a shop for sale in said insured
building without the consent of the com-
pany in writing after the execution of
said Policy & before the fire occurred,
they will find for Deft.

154
4 Unless the Jury believe from the Evidence or from
the Admissions made by defendant & read to the
Jury, That the persons Sustaining loss
in the said building on said premises insured,
gave notice in writing to said Company or
their Agent as soon after as possible and de-
livered a particular an account ~~as possible~~
of their loss or damage as the nature of the
Case would admit, signed with their own hands
and accompanied the same with their oath
or affirmation declaring the said acc-
ount to be just & true, And showing what
other if any insurance had been made
on said property & what was the whole
Cash value of the subject insured & what
was their interest therein & in what gen-
eral manner as to Trade, Merchandise
or otherwise the building insured and the
several parts thereof were occupied if occu-
pied at the time of the loss & who were the occupants
of such building if occupied and where and how
the fire originated so far as they knew or
believed; - and also produce a certifi-
cate under the hand and seal of a Mag-
istrate, Notary Public or Commissioner of
Deeds most contiguous to the place of
the fire & not concerned in the loss as a
creditor or otherwise or related to the in-
sured or sufferers, stating that he had
examined the circumstances attending the
fire, loss or damage alleged And that he
was acquainted with the character and

15-8-

circumstances of the insured or claimants
And that he verily believed that they
had by misfortune & without fraud or
evil practice, sustained loss or damage
On the interest insured on said
property to the amt. in such certifi-
cate stated, which shall have
been certified to by the said officer, the
Jury will find for the Plaintiff.

The cause was then submitted to the
Jury who retired & returned the fol-
lowing verdict:

"We the Jury find the issues for the Plaintiff.
And assess their damages at the sum
of five hundred and thirty three dollars
D. H. Ritchey Foreman"

To which verdict the Plaintiff then
objected & excepted.

The Plaintiff then filed the following motion
for a new trial & in arrest of judg-
ment:

"State of Illinois }
" Knox County } ss.
"

By me Circuit Court
Jesse Forman Clerk

15-6

George A. Wetmore et al } Assumpsit
v. }
New England Fire & Marine Ins. Co. } The Negl.

Comes And moves the Court for
a new trial And in arrest
of judgment. For the following
reasons, To wit:—

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

2nd Because George B. C. And
Mary A. Wetmore had assigned
their interest in the Policy & mort-
gage interest in said premises
~~to said Long before the fire &~~
~~before~~

15-7

ices to said Long before the fire and before the commencement of this suit, which appears in the declaration & Evidence

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

3d
mm — Because Stewart & Scroggs had no interest in said premises at the time of the obtaining a renewal receipt of said Policy.

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

5th Because the Court permitted the Plff to give in evidence the Policy without the Application

6th Because the Court permitted the Plff to give in Evidence An Assignment to the New England Marine & Fire Insurance Company, tendered & refd. and refused by them.

7th Because Court permitted Plff

give in Evidence An Assignment to said Stewart & Scroggs dated July 4th 1860, executed by Elias Long

158 8th Because the Court admitted in Evidence a renewal receipt to Stewart & Scroggs when they had no interest in the premises at the time of its date.

9th Because the Court admitted in Evidence an agreement between the Deft and Stewart & Scroggs & declaration of appraisement without the attached proof of loss.

10th Because the Evidence did not show any proof of loss made by Plff & Deft, before the commencement of this suit or at any other time

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

12th - Because the Court gave improper instructions for Plffs.

13th Because the Court refused instructions as asked by Deft. & gave them as modified by the Court

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

15th Because the Court overruled the Deft's

Motion for a non-suit.

16th Because the verdict of the jury was against the Evidence

159

14th Because the verdict was against the Law

18th Because the Verdict was Against the Instructions given by the Court

19th Because the Evidence proved conclusively that the building insured as a "boarding house" was changed and a part of it occupied as a "stable" and a horse kept in it for six months with hay & food for the horse during the winter of 1860 & 1861
Tyler & Ransom
Atty's for Deft.

"Filed June 12/62. John H. Lewis, Clerk"

September 22nd 1862

This day met the Circuit Court of Knox County, Illinois, in Court in Course, of the September Term pursuant to adjournment; the Record of which is as follows:

The Court refused to grant a new trial or arrest the judgment. But rendered judgment on the verdict.

161 To which decision of the court refusing said motion & in arrest of the judgment rendered the plaintiff. Then & there in open court objected and excepted. And prayed an appeal to the Supreme Court.

Which was allowed upon the terms and conditions stated in the record.

And as the same do not appear of record, And as to all of the said opinions & decisions the said plaintiff, excepted severally, And pray the court to sign and seal this Bill of Exceptions And make it a part of the record in this cause. Which is done.

L. J. Lawrence ^{Stet}

Upon the back of which Bill of Exceptions appears as follows:

"By agreement of counsel the Clerk will mark this Bill

as filed of some day within the sixty
days rule

W. B. Lawrence

And also:-

161
"Filed as of the 24th
"day of November and also as per
"agreement above."

J. B. Lewis (clerk)

State of Illinois
County of Knox } ss.



I, John B. Lewis, clerk
of the Circuit Court in and for said county
and state, do hereby certify that the above
And foregoing instrument of writing is a true
correct and "complete" copy of the record
and files of said Circuit Court in the above
entitled cause or suit; excepting process
for subpoenas and subpoenas and the returns
on them and the copies of rules of court on
Wife atty. to produce books &c, read by
sheriff.

In testimony whereof I have hereunto set
my hand and affixed the seal of said court
at Knoxville, this 26th day of March
A.D. 1863



John B. Lewis Clerk
J. E. Chesney Deputy

The Pff in appeal assign the following Errors

- 1st Because the Pffs below ~~had~~ ^{did} not have any interest in property ^{interest} ~~disputed~~ at time of Fore,
- 2^d Because Stuart & Sroog do did not have any interest in premises at the time of the issuing of the Renewal Receipt
- 3^d Because Court permitted Joseph C. Sroog to be sworn as a Witness in said case,
- 4th Because the Court permitted Pffs to give to the Jury improper Evidence
- 5th Because the Court overruled the motion for a new Suit,
- 6th Because the Court refused proper instructions asked by Deft.
- 7th Because the Court gave improper instructions
- 8th Because the verdict was against the law & the Evidence
- 9th Because the Court Refused to grant motion for a new trial & in arrest of Judgment,

A. John Atty for Pff ~~and~~
~~Appellant~~

Finders in Error

And now comes the Defendant Appellee & says for Finders in error, there is no such error in the Records & proceedings in this Cause as the Appellant

above has allayed

Douglas Hersey
for Appleton

67 140
New England Fire
& Marine Insurance Company

vs
Wetmore & others

Recd assgt
of Ins & friends

Filed April 22nd 1863

L. Leland
clerk