No. 12721

Supreme Court of Illinois

Atlantic Ins. Co.

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vs.

Wright

71641 7

168 189

The Atlantic Fire Insurance Company

vs

Edward Wright

168

1271

1859

Be it Remembered that heretofore to wit— on the thirtieth day of March A.D. 1858. Edward Wright Plaintiff by Beckwith & Hosmer, his attorneys, filed in the office of the Clerk of the Court aforesaid, his certain declaration, against the Atlantic Fire Insurance Company, of Brooklyn, Defendant, which is in the words and figures following, to wit—

1. pag. State of Illinois } Circuit Court of Cook County—
Cook County } ss. of the April Term, A.D. 1858.

Edward Wright, by C. Beckwith, and C. B. Hosmer, his attorneys, complains of the Atlantic Fire Insurance Co. of Brooklyn, Defendant, in a plea of trespass on the case on promises—

For that whereas, heretofore to wit, on the 21st day of March, in the year of our Lord, one thousand eight hundred and fifty seven, the said defendant at the city of New York, to wit, at Chicago, in the County of Cook, and State of Illinois aforesaid, made, executed and delivered to said plaintiff, a certain Policy of Insurance, and which said policy of Insurance, is in substance as follows, to wit

Capital $150,000. Stock Company No 29.991—

Atlantic Fire Insurance Company—

By this Policy of Insurance, the Atlantic Fire Insurance Company of Brooklyn, in consideration of Fifty two 50/100 Dollars, to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, do insure Edward Wright against loss or damage by fire, to the amount of Five Thousand Dollars, on his five

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Story brick, stone front building, occupied on the first floor as retail dry goods Store, and in second Story as wholesale Millinery Store — Situate on the North side of Lake Street, No. 114 and 116 between Clark and Dearborn Streets, in the City of Chicago, Illinois, and marked A on application and Diagram No. 29.991 on file in this office, to which this insurance refers, and which is hereby made a part of this policy —

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$5000 Insured by the Aetna Ins. Company of Hartford —
$5000 Insured by the Liverpool & London Ins. Co. of London —
$5000 Insured by the Garden City Ins. Co. of Chicago, of Illinois.

And the Atlantic Fire Insurance Company of Brooklyn, above named, for the consideration aforesaid, do hereby promise and agree to make good to the said assured, his Executors, administrators and assigns, all such loss or damage not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the twenty-first day of March, one thousand, eight hundred and fifty seven, (at 12 o'clock at noon) unto the full end and term of one year thence next ensuing, which term will expire on the twenty first day of March, one thousand eight hundred and fifty eight (at 12 o'clock at noon) the said loss or damage to be estimated according to the true and

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actual cash value of the said property, at the time such loss or damage shall happen — and to be paid within sixty days after due notice and proof thereof,

United States of America } **Pleas,** *before the* Honorable George Manierre
STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

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

Present, Honorable George Manierre *Judge of the 7th Judicial Circuit of the State of Illinois.*

Carlos Haven *States Attorney.*

John L. Wilson *Sheriff of Cook County.*

Attest: Wm. L. Church *Clerk.*

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3. made by the assured, in conformity to the conditions annexed to this policy — Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen or take place, by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power — And provided further, that in case the assured shall have made any other insurance against loss by fire, on the property hereby insured, not notified to this Corporation, and mentioned in, or endorsed upon this ~~property~~, policy, then this Insurance shall be void, and of no effect — And if the said Insured, or his assigns, shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this Corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this Policy shall cease, and be of no further effect —

\+ And in case of any other Insurance upon the Property 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
4. 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, or any part thereof, shall at any time after the

making of, and during the time this Policy would otherwise continue in force, be appropriated, applied, or used to or for the purpose of carrying on, or exercising there-in, any trade, business, or vocation, denominated hazard-ous or extra hazardous, or specified in the memorandum of special rates in the terms and conditions annexed to this policy — or for the purpose of storing or keeping therein, any of the articles, goods, or merchandize in the same terms and conditions denominated hazardous or ex-tra hazardous, or included in the memorandum of spec-ial rates, unless as herein specially provided for or hereaf-ter agreed to, by this Corporation, in writing, to be added to, or endorsed upon this Policy, then and from thence-forth, so long as the same shall be so appropriated, applied or used, these presents shall cease, and be of no force or effect —

And it is moreover declared that this Insurance is not intended to apply to, or cover any books of account, written securities, deeds, or other evidences of titles to lands — nor to bonds, bills, notes, or other evidences of debt — nor to money or bullion — And this policy is made and accept-ed in reference to the terms and conditions hereunto annexed, which are to be used and resorted to, in or-der to explain the rights and obligations of the parties hereto, in all cases, not herein otherwise specially pro-vided for —

This Insurance (the risk not being changed) may be continued for such further term as shall be agreed

5. on, provided the premium therefor, is paid and endorsed on this policy, or a receipt given for the same.

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

In witness whereof, the Atlantic Fire Insurance Company have caused these presents to be signed by their President, and attested by their Secretary, in the City of New York, this twenty-first day of March, in the year of our Lord, one thousand, eight hundred and fifty-seven

Horatio Dorr, Secretary, John D. Cocks, President— as by reference to said policy of insurance being thereunto had, will more fully appear— And the said plaintiff, in fact says that the said terms and conditions, and the memorandum of special rates, annexed to the said Policy, and mentioned and alluded to therein, are as follows, that is to say—

Not Hazardous—

This class embraces stocks of Dry Goods, Furniture, and all other articles that are liable in the lowest degree, to destruction, or damage by fire— But as such articles are usually kept in the same building with articles denominated hazardous, and are exposed to

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such additional hazard, they are charged at the same rate of premium – namely Ten Cents per $100 in addition to the rate of the building – Exceptions – Household Furniture in dwellings in cities, an addition to the rate of the building, of Five Cents per $100 – Stocks that are entirely of staple Foreign Dry Goods in packages, and stocks that are entirely of staple Domestic Dry Goods, an addition of Five Cents per $100.

Hazardous –

The following Trades, 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, earthen, or glass ware, plate glass in boxes, crates or casks, fire-crackers, in packages, flax in bales, grocers stocks, gutta percha unmanufactured hats, with ironing, trimming and pressing, hay pressed in bundles, hemp in bales, India Rubber unmanufactured, Manilla or Sisal Grass in bales, oil, sail-makers, spirituous liquors, sugars, sulphur, segars and segar makers, tallow, wine-dealers' stock, not including wine in glass unpacked –

The following are considered Hazardous on account of their liability to damage, and are charged 10 cents per $100 in addition to, but do not increase, the rate of the building in which they are contained – they are boots and shoes, brushes, (stocks of) card printing, by hand power, coffee, cotton batts and wadding, dry goods (general stocks of,) flour, furs, and peltries in packages,

7. hardware and cuttlery, hides and leather, indigo, looking glasses in boxes, metals (in bars, rods, pigs, or sheets) paints ground in oil) paper hangings, paper in reams, potash, rice, spices, tailors' stocks and ready-made clothing, teas, threshed grain, tin or sheet iron or copper ware, wine in glass in packages, wine in casks, window or plate glass in boxes.

Extra Hazardous.

The following Trades, 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, basket bleaching or making, basket-sellers' stock, brass turning or working, brush-makers' stock, bottling cellars, cabinet-makers' stock, carving china, or glass, or earthen ware, or looking-glasses with packing or unpacking, chocolate-making, colormen's stock, copper-plate printers, cotton in bales, cotton brokers' samples, daguerreotyping, drugs (importers' stocks of, without inflammable acids or phosphorus) essential oils, eating-houses or refectories, fur or wool hat-finishing, (with the use of fire heat to steam and block the bodies) gilding, gun making or repairing, gutta percha goods, India rubber goods, lithographing, manilla grass unpacked, morocco manufacturing, musical instrument makers stocks, oakum in bales, painters' stock, perfumers stock, pitch, plumbing and pocket-book making, porter houses, printing of newspapers and engravings, rag and junk shop stock, rags in packages, rosin, ship-chandlery, spirits of turpentine, tar, taverns, tin, sheet-iron or copper working, turning of wood, umbrella-making, upholstery manufacturing, varnish, and wooden-ware sellers stock and wool—

The Following are considered Extra Hazardous on account of their great liability to damage, and are charged 20 cents per $100 in addition to, but do not increase the rate of the building—they are—artificial flowers, booksellers stock, cabinet-ware, china, glass or earthen-ware unpacked, confectioners' stock, daguerreotypists' stock, furs unpacked, jewellers' stocks, lamp-sellers stock, liquor in glass unpacked, looking-glasses unpacked, milliners' stock, musical instruments, and printed ~~ware~~, music, needles, optical and mathematical instruments, perfumery and fancy goods, pictures and prints, precious stones, pocket-book makers' stock, silver and plated ware, silver-smith's stock, straw-goods, stationary, toys, watch-makers' stock and tools, window and plate-glass unpacked, wine in glass unpacked.

Memorandum of Special Hazards—

The following are considered Specially Hazardous,—and subject the building and all contained therein, to such additional charge as shall be agreed on. they are—Acids (nitric, sulphuric, muriatic and other inflammable acids) bakeries, bark-mills, bleaching-works, blacksmith's shops, blind-makers' shops, block and pump makers' shop, boat-builders' shops, book-binderies,

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brass-funderies, breweries, brick-yards, with kilns, brimstone-works, brush-manufactories, carpenters' shops, cabinet-makers' shops, chair-makers' shops, camphene on sale, candle manufactories, chemical laboritories, copper-smiths' shops with forges, coffee and spice mills, coach-makers' shops, comb manufactories, coopers' shops, confectionary manufactories, corn-kilns, cotton mills, cotton presses, cotton unpacked, distilleries and rectifying establishments, dyeing establishments, druggists stock (wholesale) drug and spice mills, ether, fur-dressing establishments, fences and privies of wood, fire-works, fire-work manufactories, flax mills, flax unpacked, floor-cloth manufactories, fringe manufactories, fulling-mills, gas-works, glass houses, grate manufactories, grist, or flouring mills, gun powder, gun manufactories, hat manufactories, hay unpacked, hay presses, hemp unpacked, hemp manufactories, hotels, houses building or repairing, India rubber or gutta-percha manufactories, ink manufactories, iron founderies, ivory-black and lamp-black manufactories, lime-yards and sheds, livery-stables, lamp manufactories, lime unslacked, lumber-yards, looking-glass and picture-frame manufactories, machine-shops, mahogany-yards, malt-houses, match manufactories, musical instrument manufactories, metal mills, oil-boiling houses, oil-factories, oil-cloth manufactories, oiled-clothing manufactories, omnibus stables, organ manufactories, plating, plated ware manufactories, packing buildings or yards, pork-houses, paper-mills, paper-hanging manufactories, perfumery manufactories, percussion cap manufactories, piano forte manufactories, print works, printers of books and job-printers, planing, grooving or moulding mills, powder mills, phosphorus, rope and cordage manufactories, rolling mills, safe (iron) manufactories, sash and blind manufactories, saltpetre, ships, building or repairing, saw-mills, soap and candle manufactories, snuff-mills, silver-smith's shops, spirit-gas manufactories, and spirit gas on sale, stables, stave yards, steam-boats, steam-engines in use, sugar refineries, tobacco steameries, tobacco manufactories, tallow chandleries, tanneries, tar-boiling houses, theatres, and other places of public exhibition, type and stereotype founderies, timber yards, turpentine distilleries, varnish manufactories, woollen mills, wheel-wrights' shops, and generally all mills and manufacturing establishments, and all trades and occupations requiring the use of fire-heat, not before enumerated.

Camphene, Spirit Gas, "Burning Fluid," Phosgene, or any other inflammable liquid, when used in dwellings or stores, warehouses, shops or manufactories as a light, subject the goods therein to an additional charge, and permission for such use must be endorsed in writing on the Policy, otherwise the Insurance shall be void.

Saltpetre, (exceeding 500 lbs) Gunpowder and Phosphorus

11. 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—

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

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

Conditions

Conditions of Insurance.

1— Applications for insurance on property must be in writing and specify the construction and materials of the building to be insured, or containing the property to be insured, by whom occupied, whether as a private dwelling, or how otherwise— its situation with respect to contiguous buildings, and their construction and materials— and whether any manufactory is carried on within, or about it— and in relation to the insurance of goods and merchandise, the application must state whether or not they are of the description denominated hazardous, extra hazardous, or included in the memorandum of special hazards. If any person insuring any building or goods in this office, shall make any misrepresentation or concealment, or if, after the insurance has been effected, either by the original Policy, or by the renewal thereof the risk shall be increased by any means whatever, within the control of the assured — or if such building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void, and of no effect —

If during the insurance, the risk be increased by the erection of any building or buildings, or by the use or occupation of neighbouring premises, or otherwise — or if for any other cause, the Company shall so elect, it shall be optional with the Company, after notice given to the assured, or his, her, or their representative, of their intention to do so, to terminate the insurance, in which case the Company will refund a ratable proportion of the premium —

\+ 2 — No insurance, whether original or continued, shall be considered as binding, until the actual payment of the premium —

\+ 3 — Property held in trust, or on sale, or on commission, must be insured as such — otherwise the Policy will not cover such property — and in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein —

Goods on storage, must be separately and specifically insured —

\+ If the interest in property to be insured, be a lease hold interest, or other interest not absolute, it must be so represented to the Company, and expressed in the Policy in writing, otherwise the insurance shall be void.

4 — The interest of the insured in this Policy is

13. assignable, provided the consent of the Company be first obtained to the transfer — notice of such assignment shall be given before any loss may have happened — and this Company, when so notified, may elect either to continue the insurance, and express the same by endorsement on this policy, or refund a ratable proportion of the premium, for the time of the risk unexpired; and cancel the policy — In case of assignment, without the consent of the Company, whether of the whole policy, or of any interest in it, the liability of the Company in virtue of such policy, shall thenceforth cease —

\+ 5 — Notice of all previous insurances, 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 shall be of no effect — And in case of subsequent insurances on property insured by this Company, notice thereof must also, with all reasonable diligence, be given to them — to the end that such subsequent insurance may be endorsed on the policy subscribed by this Company, or otherwise acknowledged in writing — in default whereof, ~~this~~ such Policy shall thenceforth cease, and be of no effect — And in all

\+ cases of insurance, this Company shall be liable only for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different Policies—

6— In case of fire, or of exposure to loss or damage thereby or loss or damage thereby, it shall be the duty of the insured, to use his, her, or their best endeavors, for saving and preserving the property— And if they shall fail so to do, this Company shall not be held liable to make good the loss and damage sustained, in consequence of such neglect— And it is mutually understood, that there can be no abandonment to the insurers of the subject insured—

This Company will not be liable for loss or damage caused by lightning, except that which shall result from fire that may ensue therefrom— nor for loss or damage occasioned by the explosion of a steam boiler, gunpowder, or any other explosive substance, except only such loss as shall result from fire that may ensue therefrom, nor shall the Company be liable for any loss by such fire, unless privilege shall have been given in the Policy to keep such articles— nor for any loss or damage by fire, happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power—

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

8— Jewels, jewelry, precious stones, watches, plate, medals, musical instruments, printed music, scientific instruments, paintings, prints, engravings, statuary, sculptures

15. and other works of art, curiosities, models and casts, are not included in any insurance, unless particularly specified in the Policy—

\+ 9— Persons sustaining loss or damage by fire, shall forthwith give notice thereof, in writing, to the Company, 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 by their own hands— And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just— showing, also, whether any and what other insurance has been made on the same property— giving a copy of the written portion of the Policy of each Company, what was the whole cash value of the sub-

\+ ject insured— what was their interest therein— in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured, or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building— and when and how the fire originated, so far as they know or believe— They shall also produce a certificate under the hand and seal of a Magistrate, Notary Public, or Commissioner of Deeds, most contiguous to the place of the fire, and not concerned in the loss, as a creditor or otherwise, or related to the insured or sufferers, stating that he has examined the circumstances attending the fire, loss, or damage alleged— and that he is acquainted with the character

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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 which such Magistrate, Notary Public, or Commissioner of Deeds, shall certify —

Note 1. — When merchandise, or other personal property, is partially damaged by fire, the insured shall forthwith cause it to be put in as good condition as the case will allow, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods, so that the damage can be easily ascertained — and shall cause an inventory or list of the whole to be made, naming the quantity and cost of each article, after which the amount of damage shall then be ascertained by the examination and appraisal of each article, by two or three competent persons, (who are not interested in the loss as creditors, or otherwise, nor connected with the insured or sufferers) to be mutually appointed by the insured, and the Company, or their Agent, the report of such appraisement to be made in writing, under oath, before a Magistrate, Notary Public, or Commissioner of Deeds, (one-half of the appraiser's fees to be paid by insurers) and the insured shall
+ also, if required, submit to an examination under oath by the agent or attorney of the Company, and answer all questions touching his, her or their knowledge

17. of anything relating to such loss or damage, or to their claim thereupon, and shall subscribe such examination, the same being reduced to writing — and whenever required, the insured, or persons claiming, shall produce and exhibit to the Company, or their agent, at the office of the Company, his books of account and other vouchers, in support of his claim, and permit extracts and copies thereof, to be made — and shall also exhibit to any person or persons named by the Company, and permit to be examined by them, any property damaged, on which any loss is claimed, or any property saved, which was insured by this Policy and until such proofs, declarations, and certificates are produced, and such exhibition of damaged property, books and vouchers be made, the loss shall not be payable —

Note 2 — When a building, merchandise or other personal property is totally destroyed, the insured shall furnish the Company or their agent, or the appraisers appointed as above provided, with the best evidence the case will admit, of the cash value of the property, immediately before the fire — the value of merchandise to be stated at wholesale cash prices — When a building is partially damaged, the appraisers are to state the sum in cash, that will pay the cost of repairing the damage —

Note 3 — All fraud or false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurer on this

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Policy—

10—In case of any loss on, or damage to the property insured, it shall be optional with the Company to replace the articles lost or damaged, with others of the same kind and quantity, and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention to do so, within forty days after having received the preliminary proofs of loss, required by the ninth article of these conditions—

In case differences shall arise concerning any loss or damage by fire, the matter may by mutual consent, be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing, as to the amount of such loss and damage, shall be binding on both parties

+ 11—Payment of losses shall be made in sixty days after

+ the loss shall have been ascertained and proved—

12—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, when the risk has been changed, either within itself or by the surrounding or adjacent buildings—

+ 13—When a policy is made and issued upon a

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survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy and warranty on the part of the assured –

14 – The Company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect of, or deviation from the laws or regulations of police, made to prevent accidents from fire, in places where laws and regulations on this subject, exist –

15 – 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 ~~against said Company~~, within the term of twelve months, next, after any loss or damage shall occur – and in case any such suit or action shall be commenced against said Company, after the expiration of twelve months next, after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced –"

averment + And the Plaintiff avers that on the nineteenth day of October, one thousand, eight hundred and fifty seven, the five story brick Stone front building occupied

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on the first floor, as Retail Dry Goods Store, and in the second story, as wholesale millinery Store, situate on the north side of Lake Street, and numbered 114 and 116, between Clark and Dearborn Streets, in the City of Chicago, Illinois – being the same building described in the said Policy of Insurance, was accidentally and without the fault of the said plaintiff, consumed, lost, and damaged by fire, and that the amount of such loss and damage by fire as aforesaid, amounted to a very large sum, to wit, the sum of Twenty-five Thousand Dollars, and the said Plaintiff further avers that he did forthwith, to wit, on the twenty-first day of October, 1857, give notice thereof, to the said Company and delivered to the said Company, a full and particular account of such loss and damage by him sustained, signed with his name, and verified by his oath, duly administered by his oath, in due form administered by Charles B. Hosmer, a Notary Public in and for the County of Cook and State of Illinois, and on the same day the said Plaintiff declared on oath duly administered by the said Charles B. Hosmer, Notary Public as aforesaid, that no insurance had been made on the property so insured, lost and destroyed since the date of the said Policy, and that no other or different insurance had at any time been made on the said property, except such as is mentioned in, or endorsed on said Policy, and gave to the said Company a copy of the written portion of the Policy, each company

21. which had taken any insurance on the said property, and declared what was the cash value of the said building so insured, lost and destroyed, and what was
+ his interest in the property insured, and how, and in what general manner the building insured, and the several parts thereof, were occupied, at the time of the loss, and who were the occupants of the said building, and how the fire originated, so far as he knew, or believed. And procured a certificate from Charles B. Hosmer, Notary Public as aforesaid (he being most contiguous to the place of the fire, and not concerned in the loss as creditor, or otherwise, or related to the insured or sufferers) stating that he had examined the circumstances attending the fire, loss and damage, and that he is acquainted with the character and circumstances of the said plaintiff, and that he verily believes that he has by misfortune, and without fraud or evil practice, sustained loss or damage on the said building to the amount of Twenty Thousand Dollars, and the
+ said plaintiff further avers that he was the absolute owner of the said building, so lost and destroyed as aforesaid, and that he furnished to the said Company, proof satisfactory to the said Company, that the said building so insured, lost and destroyed, was at the time of the fire, and immediately prior thereto, worth the sum of Twenty Thousand Dollars, or more, and that the loss was total _ and although the said plaintiff hath conformed himself to, observed, performed,

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fulfilled and kept all things in the said Policy of Insurance, and in the said Terms and conditions, on his part, to be conformed to, observed, fulfilled or kept, according to the form and effect of the said Policy, and of the said terms and conditions, and although sixty days have elapsed since the said loss was so ascertained and proved, yet the said defendant, not regarding its said promise and undertaking, so by it made as aforesaid, did not, nor would, although often requested so to do, pay the said loss or damage so sustained as aforesaid, or any part thereof, but has hitherto wholly neglected and refused, and still neglects and refuses so to do, to wit, at Chicago aforesaid.

2 Count. 2nd Count — And whereas also, the said defendant afterwards to wit, on the twenty first day of March, in the year of our Lord, one thousand, eight hundred and fifty seven, by their Policy, under the hands of the President and Secretary thereof, duly made, executed and delivered to the said plaintiff, for a certain premium then and there paid by the said plaintiff, made insurance upon the five story, stone front brick building ~~[illegible]~~ of the said plaintiff, against loss or damage by fire, to the amount of a large sum of money, to wit, the sum of five thousand dollars, which said policy of insurance so made and executed as aforesaid, is set forth in the first count of this declaration, reference being thereto had, for greater particularity —

And the said plaintiff avers, that thereafter, to wit,

23. on the nineteenth day of October, A.D. 1857. the five story brick stone front building, occupied on the first story as retail dry goods store, and in second story as wholesale Millinery Store, and situate on the North side of Lake Street, Nos. 114 and 116. between Clark and Dearborn Streets, and described and mentioned in the said policy of insurance, was accidentally, and without fault of the said plaintiff, consumed, lost and destroyed by fire, and the said loss and damage by fire as aforesaid, amounted to a very large sum, to wit the sum of Twenty-five Thousand Dollars - And the said plaintiff further avers that he did forthwith to wit, on the twenty-first day of October A.D. 1857. give notice of such loss and damage, to the said Company, and on the same day, and as soon after as possible, made proof of such loss, and of the value of the said building satisfactorily to the said Company, said notice of said loss as aforesaid, and said proof of the value of said building, being verified by the oath of Charles H. Peck, agent of the said defendant (he, the said defendant, being at that time, absent from the City of Chicago and out of the State) duly administered by Charles B. Hosmer, a Notary Public in and for the town of South Chicago, in the County of Cook and State of Illinois, and the said plaintiff also by his agent, the said Charles H. Peck, declared on oath duly administered by the said Hosmer, Notary Public, as aforesaid, that no other insurance had at any time, been made

on the property so insured, lost and destroyed as aforesaid, except as mentioned in said policy, and procured a certificate under the hand of the said Hosmer, as such notary as aforesaid, he being most contiguous to the place of the fire, and not concerned in any way in the said loss, or related to the sufferer, or insured, Stating that he had examined the circumstances attending the said fire, and the loss and damage, and that he is acquainted with the character and circumstances of the said Plaintiff, and that he verily believes that he has by misfortune, and without fraud or evil practice, sustained loss and damage to the amount of Twenty Thousand Dollars—

And the said plaintiff further avers that he hath in all things, conformed himself to, observed, performed, fulfilled and kept all things in the said Policy of Insurance, and in the said Terms and Conditions, and Memorandum of Special rates, on his part and behalf to be observed, kept and performed, according to the form and effect of the said Policy of Insurance, and of the said Terms and Conditions and Memorandum of Special rates, and although sixty days have elapsed, since the said loss and damage was so ascertained and proved, yet the said defendant, not regarding its said promise and undertaking, so by it made as aforesaid, did not, nor would, although often requested so to do, pay the said loss or damage, so sustained as aforesaid, or any part thereof, but has hitherto wholly neglected and refused, and still neglects and refuses so to do, to wit, at Chicago aforesaid.

And whereas also the said defendant afterwards to wit, on the first day of January, A.D. 1858. at the place aforesaid, became indebted to the said plaintiff, in the sum of Ten Thousand Dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiff to the said defendant, at the special instance and request of said defendant, and for other money by the said plaintiff before that time, paid, laid out and expended for the said defendant, and at the like request of said defendant, and for other money before that time had and received by the said defendant, to and for the use of the said plaintiff, and being so indebted, the said defendant, in consideration thereof, afterwards to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said Plaintiff, well and truly to pay unto the said plaintiff, the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant hath not paid the said several sums of money above mentioned or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant hath hitherto wholly refused, and still doth refuse so to do, to the damage of the said plaintiff of Ten Thousand Dollars, and therefore the said plaintiff brings suit &c.

Beckwith & Hosmer,

Pltffs attys—

And afterwards, to wit, on the 13th day of April, in the year last aforesaid, the said Defendant, by Morris, Blackburn & McComas, its attorneys, filed in the Court aforesaid, its certain plea to the said Plaintiff's declaration, which is in the words and figures following, to wit—

Cook County Circuit Court.

Of the April Term, 1858

The Atlantic Fire Insurance Company
ads
Edward Wright—
} Assumpsit—

And the said defendant comes and defends &c. and says it did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against it, the said defendant, and of this, the said defendant puts itself upon the country—

by Morris, Blackburn & McComas
its attys—

And the said plaintiff doth the like,

by C. B. Hosmer, his atty—

And afterwards, to wit, on the 5th day of June, in the year aforesaid, the said defendant, by its said attorneys filed in the Court aforesaid, its certain other Pleas, to the said Plaintiffs declaration, which are in the

27.

words and figures following to wit-

State of Illinois } Cook County Circuit Court
Cook Co } To wit- April Term, 1858.

Atlantic Fire Insurance Co.
ads } Assumpsit-
Edward Wright

2 And for further plea in this behalf, to the 1st and 2nd Counts, of said declaration, the said defendant, by E. W. McComas, its attorney, comes and saith that the said plaintiff ought not to have and maintain his aforesaid action thereof, against the said defendant, because it says that at the time of the supposed loss by fire of the property in the declaration mentioned, as alleged in said declaration, the said plaintiff was not the owner of said property, and this the said defendant is ready to verify- wherefore &c.

3. And for further plea in this behalf, to the said 1st and 2nd counts of said declaration, the said defendant, by E. W. McComas, his attorney saith that the said plaintiff ought not to have and maintain his aforesaid action thereof, against the said defendant, because it says that the said plaintiff, for the purpose of procuring the execution of the policy of insurance, and the several promises and undertakings of the said defendant, set out and charged in the said declaration, and at and before the execution and delivery of the said policy of insurance, by the said

[12361-44]

defendant, the said plaintiff falsely and fraudulently represented to the said defendant, that he, the said defendant, was the owner of the property insured in said Policy, and mentioned and set out in said declaration, by means of which said false and fraudulent representations, the said defendant was induced to sign and execute and deliver the said policy of insurance, and that by means of the premises, and of the said false and fraudulent representations, the said defendant saith that the said policy of insurance, and the promises and undertakings of the said defendant, became and were at, and before the time of the fire, and the loss of the property insured by said policy, and mentioned in said declaration, as set out in said declaration, wholly void, and of none effect, and this, said defendant is ready to verify — Wherefore &c.

4. And for further plea in this behalf, to the said 1st and 2nd counts of said declaration, the said defendant, by his said attorney saith that the said plaintiff, ought not to have or maintain his aforesaid action thereof, against the said defendant, because it says that at the time of the execution, signing and delivery of the policy of insurance, by said defendant, and at the time of the making of the several promises and undertakings of the defendant, in the declaration mentioned and set out, the said plaintiff was not the owner of the property, houses and Lots

29 in the said declaration mentioned, and this the said defendant is ready to verify, wherefore &c.

plea. 5. And for further plea in this behalf, to the said 1st & 2nd counts of said declaration, the said defendant, by E. W. McComas, its attorney says that the plaintiff ought not to have and maintain his aforesaid action thereof, against the said defendant, because it says that before and at the time of the signing, execution and delivery of the said policy of Insurance, and of the making of the several promises, and undertakings of the said defendant in the declaration mentioned, and set out, the said plaintiff had no insurable interest, or ownership in the property, houses and lots in the said policy of insurance, and in said declaration is mentioned, and that the said plaintiff, well knowing the premises, and that he had no such insurable interest, or ownership thereof, fraudulently and wilfully concealed the same, and all knowledge of such want of insurable interest or ownership in the said plaintiff in said property, from the said defendant. By reason whereof, the said Policy of Insurance, and the several promises and undertakings of the said defendant aforesaid, became, and were wholly void, and of none effect, and this the said defendant is ready to verify, wherefore &c.

Morris, McComas & Blackburn,
for Defts.

And afterwards, to wit, on the 12th day of July, in the year aforesaid, the said plaintiff, by his said attorneys, filed in said Court, his certain Replication to the Pleas of the said defendant, which is in the words and figures following, to wit-

Circuit Court of Cook County-

Edward Wright
vs
The Atlantic Fire Insurance Co.

And the said plaintiff, as to the said pleas of the said defendant, by it, secondly, thirdly and fourthly above pleaded, says precludi non, because he saith that the said defendant, at the said time when &c. of his own money, and without the causes in the said pleas mentioned, did not keep and perform the said promises and undertakings in the said declaration mentioned, in manner and form as the said plaintiff hath above thereof, declared against said defendant- And this the said plaintiff prays may be inquired of by the country, &c.

And the said Deft doth the like-

By his Attorneys
Hosmer & Beckwith

And afterwards, to wit, at the June Special Term of said Court, to wit, on the 12th day of July, A.D. 1858. the following proceedings, among others, were had and entered of Record therein, to wit-

Edward Wright
12703 vs — Assumpsit-
The Atlantic Fire Insurance

31. Company of Brooklyn)

This day comes the said Plaintiff, by C. B. Hosmer, his attorney, and the said defendant, by Morris, Blackburn and McComas, its attorneys, also comes, and issue being joined herein, it is ordered that a jury come. Whereupon come the jurors of a jury, of good and lawful men, to wit. E. F. White, W. Tate, S. Gunderson, A. Snow, A. Amberg, B. Shepherd, P. Amick, A. P. Hayward, J. M. Hatch, P. A. Barker, Wm Hangman, F. Frieze who being duly elected, tried and sworn well and truly to try the issues joined herein aforesaid, and a true verdict render according to law, and the evidence, and after hearing a part of the testimony, and the hour of adjournment having arrived, it is ordered that the said Jury have leave to separate, to meet the Court at the coming in thereof, tomorrow morning, to which time, this Cause is adjourned.

And afterwards, to wit, at the same Term of said Court, to wit on the 13th day of the month and year last aforesaid, the following further proceedings, among others, were had and entered of Record, to wit.

12703 Edward Wright vs The Atlantic Fire Insurance Company of Brooklyn } Assumpsit.

This day come again, as well the said plaintiff, by C. B. Hosmer, his Attorney, as the said Defendant, by Morris, Blackburn and McComas, its attorneys, and the Jurors of the Jury aforesaid, also come, and the testimony in this cause having been closed, and the arguments of Counsel, as well on the part of the said Plaintiff, as of the said Defendant having been heard, and the instructions of the Court, said Jury retired to consider of their verdict, under the charge of a sworn officer of the Court, and afterwards come into Court, and say, "We, the

Verdict } Jury, find the issues for the Plaintiff, and assess his damages at the sum of Five thousand, one hundred and sixty-six dollars, and thirty-three cents"

Motion N. T. } Whereupon the said Defendant's Counsel moves the Court for a new trial of this cause—

And afterwards, to wit, at the November term of said Court, to wit, on the 15th day of November, in the year last aforesaid, the following further proceedings, among others, were had and entered of Record therein, to wit—

Edward Wright
12703 vs } Assumpsit
The Atlantic Fire Insurance
Company of Brooklyn

This day again come the

New trial overruled & exception to it } parties, by their Attorneys aforesaid, and the Court having heard arguments of Counsel, on the motion of the said Defendant for a new trial, of this Cause, and being fully advised in the premises, now over

33. rules the same, to the overruling of which said motion, by the Court, the defendant, by its counsel, excepts.

Judgt. Wherefore it is considered by the Court that the said plaintiff do have and recover of the said Defendant, his damages of Five Thousand, one hundred and sixty six dollars, and thirty three cents, in form as aforesaid, by the Jury herein assessed, together with his costs and charges by him about his suit in this behalf expended — and have execution therefor.

Whereupon the said defendant prayed an appeal herein, to the Supreme Court of the State of Illinois,

Appeal granted } which is granted upon condition that the said defendant files its appeal Bond herein, in thirty days from this day, in a penalty of Eleven Thousand dollars, conditioned according to law, with John R. Stafford and S. M. Johnson, as sureties to said bond — and on motion, thirty days is allowed, to said defendant, to file its Bond and Bill of exceptions, herein —

And afterwards to wit, on 15th day of November, in the year last aforesaid, the said defendant, by its said attorneys, filed in the Court aforesaid, their certain Bill of exceptions, which is in the words and figures following, to wit —

Cook County Circuit Court.

June Special Term, 1858.

Illinois }
Cook County } ss.

Edward Wright }
vs } Assumpsit.

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Atlantic Fire Insurance Co)

Be it remembered that on the trial of this Cause, the plaintiff introduced a policy of Insurance in the words and figures following—

Capital $150,000. Stock Company No 29,991

Atlantic Fire Insurance Company

By this Policy of Insurance, the Atlantic Fire Insurance Company of Brooklyn—

In Consideration of Fifty two 50/100 Dollars—

To them paid by the Insured hereinafter named, the receipt whereof is hereby acknowledged, Do Insure

—Edward Wright—

Against loss or damage by fire, to the amount of

—Five Thousand Dollars—

On his five story brick, Stone front building, occupied in the first floor, as Retail Dry Goods Store, and in second story, as wholesale Millinery Store, situate on the North Side of Lake Street, No 114 & 116. between Clark and Dearborn Streets, in the City of Chicago, Illinois—and marked A. on application and Diagram, No 29,991 on file in this office, to which this insurance refers, and which is hereby made a part of this policy—

$5000. Insured by the Aetna Ins. Co. of Hartford—

$5000 Insured by the Liverpool & London Ins. Co. of London.

$5000 Insured by the Garden City Ins Co. of Chicago of Ills.

And the Atlantic Fire Insurance Company of Brooklyn, above named, for the consideration aforesaid, do hereby promise and agree to make good, to the said assured, his

35. 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 Twenty-first day of March, one thousand, eight hundred and fifty seven, (at 12 o'clock at noon) unto the full end and term of one year, thence next ensuing, which term will expire on the twenty-first day of March, one thousand, eight hundred and fifty eight, (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 such loss or damage shall happen - and to be paid within sixty days after due notice and proof thereof, made by the assured, in conformity to the conditions annexed to this Policy - Provided always, and it is hereby declared, that this Corporation shall not be liable to make good any loss or damage by fire, which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power. And provided further, that in case the assured shall have made any other Insurance against loss by fire, on the property hereby insured, not notified to this Corporation, and mentioned in or endorsed upon this policy, then this Insurance shall be void, and of no effect. And if the said Insured, or his assigns, shall hereafter make any other Insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to the Corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing

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this Policy shall cease, and be of no further effect – And in case of any other Insurance upon the property 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, or any part thereof, shall at any time after the making of, and during the time this Policy would otherwise continue in force, be appropriated, applied, or used, to or for the purpose of carrying on, or exercising therein any trade, business or vocation, denominated hazardous or extra-hazardous, or specified in the Memorandum of Special rates, in the terms and conditions annexed to this policy – or for the purpose of storing or keeping therein, any of the articles, goods or merchandise, in the same terms and conditions denominated hazardous or extra hazardous, or included in the Memorandum of Special rates, unless as herein specially provided for, or hereafter agreed to by this Corporation, in writing to be added to, or endorsed upon this Policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, these presents shall cease, and be of no force or effect – And it is moreover declared, that this Insurance is not intended to apply to or cover any

37.
x

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

This Insurance (the risk not being changed) may be continued for such further term as shall be agreed on, provided the premium therefore is paid, and endorsed on this policy, or a receipt given for the same -

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

In witness whereof, the Atlantic Fire Insurance Company have caused these Presents to be signed by their President, and attested by their Secretary, in the City of New York, this 21st day of March, in the year of our Lord, one thousand, eight hundred and fifty seven

Horatio Dorr. Secretary - John D. Cocks, President -

Classes of Hazards -

Not Hazardous -

This class embraces stocks of Dry Goods, Furniture, and all

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other articles that are liable in the lowest degree, to destruction or damage by fire - But as such articles are usually kept in the same building with articles denominated hazardous, and are exposed to such additional hazard, they are charged at the same rate of premium - namely, Ten Cents per $100 in addition to the rate of the building - Exceptions - Household Furniture in dwellings in cities, an addition to the rate of the building, of Five Cents per $100 - Stocks that are entirely of staple Foreign Dry Goods in packages, and stocks that are entirely of staple Domestic Dry Goods, an addition of Five Cents per $100 -

Hazardous -

The following Trades, 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, earthen or glass ware, plate glass in boxes, crates or casks, fire-crackers in packages, flax in bales, grocers' stocks, gutta percha unmanufactured hats, with ironing, trimming and pressing, hay pressed in bundles, hemp in bales, India rubber unmanufactured, Manilla or Sisal grass in bales, oil, sail-makers, spirituous liquors, sugars, sulphur, segar and segar-makers, tallow, wine-dealers stock, not including wine in glass unpacked -

The Following are considered Hazardous - on account of their liability to damage, and are charged 10 cents per $100 in addition to, but do not increase the rate of the building in which they are contained - they are, boots and shoes, brushes (stocks of) card printing by hand power, coffee, cotton batts and wadding, dry goods, (general stocks of) flour, furs and peltries in packages, hardware and cutlery, hides and leather, indigo, looking-glasses in boxes metals (in bars, rods, pigs or sheets) paints ground in oil, paper-handings, paper in reams, potash, rice, spices, tailors stocks, and ready-made clothing, teas, threshed grain, tin or sheet iron or copper ware, wine in glass in packages, wine in casks, window or plate-glass in boxes-

Extra Hazardous-

The following Trades, 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, basket bleaching or making, basket-sellers' stock, brass turning or working, brush-makers stock, bottling cellars, cabinet-makers' stock, carving, china, or glass, or earthen ware, or looking-glasses with packing or unpacking, chocolate-making, colormens stock, copper-plate printers, cotton in bales, cotton brokers samples, daguerreotyping, drugs, (importers stocks of, without inflammable acids or phosphorus) essential oils, eating-houses or refectories, fur or wool hat finishing, (with the use of fire heat to steam and block the bodies) gilding, gun-making or repairing, gutta percha goods, India-rubber goods, lithographing, manilla grass unpacked, morocco manufacturing, musical instrument makers' stock, oakum in bales, painters' stock, perfumers' stock, pitch, plumbing and pocket-book making, porter houses, printing of newspapers and engravings, rag and junk shop stock rags in packages, rosin, ship-chandlery, spirits of turpentine, tar, taverns, tin, sheet iron or copper working, turning of wood, umbrella making, upwholstery manufacturing, varnish, and wooden ware sellers' stock and wool–

The following are considered Extra Hazardous on account of their great liability to damage, and are charged 20 cents per $100 in addition to, but do not increase the rate of the building – they are artificial flowers, booksellers' stock, cabinet ware, china, glass or earthen ware unpacked, confectioners' stock, daguerreotypists' stock, furs unpacked, jewellers' stock, lamp sellers' stock, liquor in glass unpacked, looking-glasses unpacked, milliners stock, musical instruments, and printed music, needles, optical and mathematical instruments, perfumery and fancy goods, pictures and prints, precious stones, pocket book makers' stock, silver and plated ware, silver-smiths' stock, straw goods, stationary, toys, watch-makers' stock and tools, window and plate glass unpacked, wine in glass unpacked–

Memorandum of Special Hazards–

The Following are considered Specially Hazardous, and subject the building and all contained therein, to such additional charge, as shall be agreed on – they are – Acids, (nitric, sulphuric, muriatic and other inflammable acids, bakeries, bark-mills, bleaching works, blacksmiths' shops, blind-makers shops, block and pump makers' shops, boat builders' shops, book binderies, brass founderies, brewing brick-yards with kilns, brim-stone works, brush manufactories, carpenters' shops, cabinet-makers shops, chair-makers' shops, camphene on sale, candle manufactories, chemical laboratories, copper-smiths' shops with forges, coffee and spice mills, coach makers' shops, comb manufactories, coopers' shops, confectionary manufactories, corn kilns, cotton mills, cotton presses, cotton unpacked, distilleries and rectifying establishments, dyeing establishments, druggists' stocks (wholesale) drug and spice mills, ether, fur-dressing establishments, fencies and privies of wood, fire works, fire-work manufactories, flax-mills flax unpacked, floor-cloth manufactories, fringe manufactories, fulling mills, gas works, glass houses, grate manufactories, grist or flouring mills, gunpowder, gun manufactories, hat manufactories, hay unpacked, hay presses, hemp unpacked, hemp manufactories, hotels, houses building or repairing, India-rubber or gutta percha manufactories, ink manufactories, iron foundries, ivory black and lamp-black manufactories, lime yards and sheds, livery stables, lamp manufactories, lime unslacked, lumber yards, looking glass and picture-frame manufactories, machine-shops, mahogany yards, malt-houses, match manufactories, musical instrument manufactories, metal mills, oil-boiling houses, oil factories, oil-cloth manufactories, oiled-clothing manufactories, omnibus stables, organ manufactories, plating, plated ware manufactories, packing buildings or yards, pork houses, paper-mills, paper-hanging manufactories, perfumery manu-

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factories, percussion-cap manufactories, piano forte manufactories, print works, printers of books and job-printers, planing, grooving, or moulding mills, powder mills, phosphorus, rope and cordage manufactories, rolling-mills, safe (iron) manufactories, sash and blind manufactories, saltpetre, ships building or repairing, saw mills, soap and candle manufactories, snuff-mills, silver smiths' shops, spirit-gas manufactories and spirit gas on sale, stables, stave-yards, steam-boats, steam-engine in use, sugar refineries, tobacco steameries, tobacco manufactories, tallow-chandleries, tanneries, tar-boiling houses, theatres and other places of public exhibition, type and stereotype founderies, timber yards, turpentine distilleries, varnish manufactories, woollen mills, wheel-wrights shops, and generally all mills and manufuring establishments, and all trades and occupations requiring the use of fire-heat, not before enumerated—

Camphene, Spirit Gas, "Burning Fluid", Phosgene, or any other inflammable liquid, when used in dwellings or stores, warehouses, shops or manufactories, as a light, subject the goods therein to an additional charge, and permission for such use must be endorsed in writing on the Policy, otherwise the Insurance shall be void—

Saltpetre (exceeding 500 lbs) Gunpowder and Phosphorus, are expressly prohibited from being deposited, stored or kept in any building insured, or containing any goods or merchandise insured by this Policy, unless

43. by special consent in writing on the Policy –

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

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

Conditions of Insurance –

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

\+ If any person, insuring any buildings or goods in this office, shall make any misrepresentation or concealment, or if, after the insurance has been effected, either by the original Policy, or by the renewal thereof, the risk shall be increased by any means whatever, within the control of the assured, or if such building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void, and of no effect–

If during the insurance, the risk be increased by the erection of any building or 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, after notice given to the assured, or his, her, or their representatives, of their intention to do so, to terminate the insurance, in which case the Company will refund a ratable proportion of the premium–

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

3– Property held in trust or on sale, or on commission, must be insured as such – otherwise the Policy will not cover such property – and in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein–

Goods on storage must be separately and specifically insured–

\+ If the interest in property to be insured be a leasehold interest, or other interest not absolute, it must be so represented to the Company, and expressed in the Policy, in writing, otherwise the insurance shall be void–

4– The interest of the insured in this policy is assignable, provided the consent of the Company be first

45: obtained to the transfer — notice of such assignment shall be given before any loss may have happened — and this Company, when so notified, may elect either to continue the insurance, and express the same by endorsement on this policy, or refund a ratable proportion of the premium, for the time of the risk unexpired, and cancel the policy — In case of assignment, without the consent of the Company, whether of the whole policy, or of any interest in it, the liability of the Company in virtue of such policy shall thenceforth cease.

x 8 — Notice of all previous insurances, 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 shall be of no effect — And in case of subsequent insurances on property insured by this Company, notice thereof must also, with all reasonable diligence, be given to them — to the end that such subsequent insurance may be endorsed on the policy, subscribed by this Company or otherwise acknowledged in writing — in default whereof, such Policy shall thenceforth cease, and be of no effect — And in all cases of insurance, this Company shall be liable only for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different Policies —

6 – 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 his, her, or their best endeavors for saving and preserving the property. And if they shall fail so to do, this Company shall not be held liable, to make good the loss and damage sustained in consequence of such neglect – And it is mutually understood that there can be no abandonment to the insurers of the subject insured –

This Company will not be liable for loss or damage caused by lightning, except that which shall result from fire that may ensue therefrom – nor for loss or damage occasioned by the explosion of a steam boiler, gunpowder, or any other explosive substance, except only such loss as shall result from fire that may ensue therefrom, nor shall the Company be liable for any loss by such fire, unless privilege shall have been given in the Policy to keep such articles – nor for any loss or damage by fire, happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power

7 – Books of account, written securities, or evidences of debt, title deeds, writings, money or bullion, are not deemed objects of insurance –

8 – Jewels, jewelry, precious stones, watches, plate, medals, musical instruments, printed music, scientific instruments, paintings, prints, engravings, statuary, sculptures and other works of art, curiosities, models and casts, are not included in any insurance, unless particularly specified in the

Policy—

9— Persons sustaining loss or damage by fire, shall forthwith give notice thereof, in writing to the Company, 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 by their own hands— And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just— showing also, whether any and what other insurance has been made, on the same property— giving a copy of the written portion of the Policy of each Company, what was the whole cash value of the subject insured— what was their interest therein in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured, or containing the subject insured, and the several parts thereof were occupied at the time of the loss, and who were the occupants of such building— and when and how the fire originated, so far as they know or believe— They shall also produce a certificate under the hand and seal of a Magistrate, Notary Public, or Commissioner of Deeds, most contiguous to the place of the fire, and not concerned in the loss, as a creditor or otherwise, or related to the insured or sufferers, stating that he has examined the circumstances attending the fire, loss, or damage alleged— and that he is acquainted with the character and circumstances of the insured or claimant— and that he verily believes that he, she, or they have by misfortune, and without fraud, or evil practice, sustained loss and damage on the subject insured, to the amount which such Magistrate, Notary Public, or Commissioner of Deeds, shall certify.—

Note 1.—When merchandise, or other personal property is partially damaged by fire, the insured shall forthwith cause it to be put in as good condition as the case will allow, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods, so that the damage can be easily ascertained—and shall cause an inventory or list of the whole to be made, naming the quantity and cost of each article, after which the amount of damage shall then be ascertained by the examination and appraisal of each article, by two or three competent persons, (who are not interested in the loss as creditors or otherwise, nor connected with the insured or sufferers) to be mutually appointed by the insured and the Company or their Agent, the report of such appraisement to be made in writing, under oath, before a Magistrate, Notary Public, or Commissioner of Deeds, (one-half of the appraiser's fees to be paid by insurers) and the insured shall also, if required, submit to an examination under oath, by the agent or attorney of the Company; and answer all questions touching his, her, or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and shall subscribe such examination, the same being reduced to writing—and whenever required, the insured, or persons claiming, shall produce and exhibit to the Company, or their agent, at the office of the Company, his books of account and other vouchers, in support of his claim, and permit extracts and copies thereof, to be made and shall also exhibit to any person or persons named by the Company, and permit to be examined by them, any property damaged on which any loss is claimed, or any property saved which was insured by this Policy, and until such proofs, declarations and certificates are produced, and such exhibition of damaged property, books and vouchers be made, the loss shall not be payable–

Note 2.– When a building, merchandise, or other personal property is totally destroyed, the insured shall furnish the Company, or their agent, or the appraisers appointed as above provided, with the best evidence the case will admit, of the cash value of the property, immediately before the fire– the value of merchandise to be stated at wholesale cash prices– When a building is partially damaged, the appraisers are to state the sum in cash, that will pay the cost of repairing the damage–

Note 3.– All fraud or false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurers on this Policy–

10– In case of any loss on, or damage to the property insured, it shall be optional with the Company, to replace the articles lost or damaged, with others of the same kind and quality and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention to do so, within forty days after having received the preliminary proofs of loss, required by the ninth article of these conditions—

In case differences shall arise concerning any loss or damage by fire, the matter may by mutual consent, be submitted to the judgment of arbitrators indifferently chosen, whose award in writing, as to the amount of such loss and damage, shall be binding on both parties—

11— Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved—

12— 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, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings—

13— When a Policy is made and issued upon a survey and description of certain property, such survey and description shall be taken and deemed to be a part and portion of such policy and warranty on the part of the assured—

14— The Company will not be answerable for any

loss arising from the use of fires in buildings unprovid-
ed with a good and substantial stone or brick chim-
ney, or in consequence of neglect of, or deviation from the
laws or regulations of police, made to prevent accidents
from fire, in places where laws or regulations on this
subject, exist—

Part of Policy

15.— 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 com-
menced within the term of twelve months next af-
ter any loss or damage shall occur— and in case any
such suit or action shall be commenced against
said Company, after the expiration of twelve months
next after such loss or damage shall have occurred,
the lapse of time shall be taken and deemed as
conclusive evidence against the validity of the claim
thereby so attempted to be enforced—"

admission} Which the defendant's Counsel admitted to have
been executed, and signed by defendant, and sent
on to Mr. A. H. Vanburen—

A. Carter} The plaintiff then introduced as a witness, Asher
Carter, who being duly sworn, testified as follows—
The plaintiff's Counsel asked the witness "Who
built the house in question"— To which question,
the defendant objected, but the Court overruled the
objection,— To which opinion of the Court, the defendant

then and there excepted _ and thereupon the said witness proceeded to testify as follows _

Edward Wright, the plaintiff, built the Store in question _ He employed me as architect _ He paid the workmen for the work, the estimates were made out in his name These were the estimates I delivered, the receipts are signed by different contractors _ The building cost about $26 000. or $27000. It was destroyed by fire about Oct 19th last _ It was then worth what it cost _ The receipts were all for work done on that store _

C. H. Peck.

The plaintiff then introduced as a witness, Charles H. Peck, who being duly sworn, testified as follows _ I acted as Plaintiff's business agent, and attorney in fact, from Oct. 1856. to Dec. last _ The plaintiff built the store in question _ I have examined these receipts, the greater part of the money was paid by me, for the plaintiff, with his money _ the contracts there did not cover all the work done _ The building cost $27.953.^{00} as nearly as I can estimate it _ Here the plaintiff introduced sundry contracts and receipts made with and given to Plaintiff for, or on account of the construction of the House in question _

State of Illinois } Cook County } ss. Agreement of the Attorneys respecting certain written evidence which has been introduced on the trial _

Edward Wright vs Atlantic Fire Insurance Company

It is hereby stipulated

53. and agreed that on the hearing of this cause, in the Supreme Court, the parties admit and concede the fact to be that the contracts and receipts given in evidence by the Plaintiff, on the trial in the Circuit Court, and refered to in the Bill of exceptions of defendant, were made between the said plaintiff in his own name, and the several contractors or persons employed in building said Store, for materials furnished and work bestowed upon the said Store,-
And this Stipulation is made by the parties for the purpose of dispensing with the receipts necessities of incorporating said contracts and Receipts in the Record, and Bill of exceptions, in this cause - agreeing that this stipulation covers and includes the whole facts proved or intended to be proved by said contracts and receipts-

Morris & McComas - Defts Attys-

Beckwith & Hosmer - Pltffs Attys-

I gave a preliminary notice in writing to Mr. Atwater, the agent of the defendant, of the loss, two or three days after the fire - This is a copy of it-

Notice.

Chicago Oct 19th 1857.

To the Atlantic Fire Ins. Co. of Brooklyn, its Officers, Agents and Servants-

Please take notice that the five story, brick Store, Stone front, situate near the centre of lot six, block seventeen, O. T. Chicago. Nos. 114 & 116. Lake Street insured by your policy, No 29.991. for Five Thousand Dollars

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was on the morning of the nineteenth day of October, 1857. consumed by fire, and that the loss is a total one.

Your's Respectfully
C. H. Peck,
attorney in fact for Edward Wright

These are the proofs furnished by me to the agent of the defendant, He (Mr. Atwater) was their agent. He informed me himself, he was agent, and I could not ascertain that the Atlantic Insurance Co. had any other agent here. These proofs were received by him as such.

+ The plaintiff's Counsel here asked the witness, this question. "What did the agent Atwater say about the proofs at the time of the delivery of them?"

To the answering of this question by the witness, the defendant objected, but his objection was overruled by the Court, and the witness was permitted to answer. To this opinion of the Court, then and there the defendant excepted.

The witness then answered and testified as follows. I took the proofs to him in his office. handed them to him, and asked him to read them and see if they were sufficient. I went out for a few minutes. when I returned, I asked him if he had read them, and if they were satisfactory. He said he had, and that they were satisfactory. I told him that I wished to have the proof correct, and if it was not so, I wished to know it. He said it was correct. The plaintiff, at that time was in Europe, I told the agent so, and he said it was satisfactory. C. B. Hosmer lived opposite the fire, and was

55. most contiguous thereto - He was a Notary Public at the time, and that, this signature to the proofs - I was present at an interview with Mr. Cox, the president of the Atlantic Insurance Co. and he said that defendant had no
x fault to find with the proofs, but he was not satisfied with the question about the trust deed - It was several days after the fire that Mr. Cox was here - These receipts were paid by me for the building - I effected the policy sued on, for the plaintiff - I had directions from the plaintiff, to effect $5000.00 more insurance in some reliable Company - I made inquiries, and was referred to Mr. A. H. Vanburen, as agent of the providence Washington Insurance Co. I effected an insurance in that Company for $5000.00 on the building in question - Two or three months after, Mr. Van. Buren came to me and said that he had too large a risk in that neighborhood, and asked me if I would change my Policy - saying that he had three or four other good companies - I said I would exchange if I could get an equally good Company - He said he had several good Companies, and mentioned the Atlantic Insurance Company - among them - I made inquiries, and ascertained that the defendant's Company was a good one, and told him that I would make the exchange in the defendant's Company - I then asked him if it was necessary for me to take any further steps in the matter, he said no, that he was acquainted with all the facts in the premises, and would hand

me the New Policy in a few days— A few days after, he handed me this Policy now in suit— and I paid him the premium for a year— (That is the difference between the new policy and the old one) and delivered up the old one— The building was not occupied until after Oct 1st 1856. I collected all the rents upon the building for the plaintiff myself, until it burned down— I applied the amount received for rents to his account, and paid it on his drafts— The Policy ran from March 21st 1857. for one year— I paid the Insurance out of money held by me as agent for the plaintiff— I paid him this Policy— and he paid back the amount that would be due on the other policy— The first policy had run four months, and I paid him the Balance—

I believe this is the original application referred to in the policy— I did not make it out, or sign it, never saw it before— Mr Van Buren probably made it out, I gave him all the information I could, I told him where the building was, to look at it, and to call on me if he wanted any more information—

Carter. Asher Carter was again called, and testified as follows— These are the Contracts made for the Store in question. There were three Stores built together— Mr. Magee owned one, and Walter Wright, another— The defendant's Counsel here admitted that the Contracts presented were for the building in question—

The defendant then introduced in evidence, the preliminary notice of loss— which is in the words and

57. and figures following –

Chicago 19th 1857

To the Atlantic Fire Insurance Company of Brooklyn, its officers, agents and servants –

see this at page 53) Please take notice that the five story brick store, stone front situated near the centre of lot six, Block seventeen, O. T. Chicago Nos 114 & 116. Lake street, insured by your policy, No 29, 991 – for five thousand dollars, was, on the morning of the nineteenth day of October, 1857. consumed by fire, and that the loss is a total one –

Your's Respectfully,

C. H. Peck

Attorney in fact for Edward Wright.

Also the proofs of loss by the plaintiff – which is in the words and figures following –

To the Atlantic Fire Insurance Company –

I, Charles H. Peck, of the City of Chicago, in the State of Illinois, being attorney in fact for Edward Wright of the same place, make oath that on the morning of the nineteenth day of this instant month of October, the "five story brick stone front building, situated on the North side of Lake Street, Nos 114 & 116. between Clark and Dearborn streets, in the City of Chicago, Illinois – and marked A on application and diagram No 29, 991 on file in this office" was lost or destroyed by fire – that said fire was communicated to the rear front of said building (as this deponent is informed and verily believes) from a fire previously existing in buildings on S. Water Street, the rear of which buildings on S. Water street came near to the rear of said building numbered 114 & 116. being separated therefrom, by an alley eighteen feet in width — That this deponent believes said fire so communicated soon spread through and over said building, and destroyed and consumed the same, except a small part of the front wall, which is left standing to the third story — but of what use, if any, it may be, in the restoration of said building, this deponent cannot say, but he believes the said wall so left standing, will require to be taken down, before the building can be rebuilt —

That this deponent considers the loss is a total one. The said building was insured in the Liverpool and London Insurance Company (56 Wall Street New York) and the Aetna Insurance Company of Hartford, Conn. and the Garden City Insurance Company of this City, for the sum of fifteen thousand dollars, five thousand dollars in each of said companies — That the whole value of the subject or building insured, was just prior to its destruction, and at that time, of the value of twenty-five thousand dollars

The said building was leased to J. B. Shay, for a dry goods store, and the said J. B. Shay had let or leased the second story of said building to Messrs. Webster and Gage, dealers in Millinery goods —

The policy of the Atlantic Insurance Company was numbered 23,991 — was for the sum of five thousand dollars, "On the five story brick stone front building occupied on the first floor as retail dry goods store, and in second story, as wholesale millinery store, situate on the North side of Lake street Nos. 114 & 116. between Clark and Dearborn streets, in the City of Chicago, Illinois, and marked A. on application and diagram No 29; 991 on file in <u>this</u> office, to which this insurance refers, and which is hereby made a part of <u>this</u> policy."

That the loss upon said property, was twenty thousand dollars, or more, and that there was not any other insurance thereon, than is herein mentioned—

That Edward Wright, the insured, is now out of the country—travelling in Europe, or on his return therefrom—and was absent before, and at the time of the fire within mentioned, and still is absent—

Charles H. Peck.
Atty in fact for Edward Wright

Subscribed, and sworn to before me, this twenty third day of October, A D. 1857.

C. B. Hosmer, Notary Public—

State of Illinois }
County of Cook } ss.

I, C. B. Hosmer, a Notary Public residing in Chicago, contiguous to the property hereinbefore described, certify that I am not concerned in the loss or claim above set forth, either as a creditor, or otherwise—that I have examined the circumstances attending the fire as alleged—that I am ac—

(2721-39)

quainted with the character and circumstances of the insured, and verily believe, that he really, and by misfortune, and without fraud and evil practice, hath sustained by such fire, loss and damage to the amount therein mentioned_

Seal. Witness my hand and official seal this 23rd day of Oct. 1857.

C. B. Hosmer
Notary Public_

The defendant then introduced in evidence, a deed from the plaintiff to E. Peck and T. Wright, which is in the words and figures following_

E. Wright to E. Peck and T. Wright use of Sarah L. Wright_ D of settlement_

This Indenture, made this 23rd of November, in the year of our Lord, one thousand, eight hundred and fifty four_ Between Edward Wright of the City of Chicago, County of Cook, and State of Illinois, of the first part, and Timothy Wright and Ebenezer Peck, of the same place, and their successors hereinafter directed, of the second part_

Whereas the said Edward Wright is desirous of making provision for his wife Sarah L. Wright, against future contingences, and for her maintainance and support, and whereas the said Edward Wright is desirous that his said wife should enjoy the proceeds, rents, issues and income of the ~~[illegible]~~ Real estate, hereinafter more particularly described_ Now therefore this

Indenture witnesseth that the said Edward Wright, in consideration of the premises, and of the sum of one Dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents, doth grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, all that certain lot, piece or parcel of land entitled lying and being in the City of Chicago, County of Cook, and State of Illinois, designated and described as follows, viz—

The West Thirty (30) feet of the East sixty (60) feet of Lot Six (6) in Block seventeen (17) in the original town (now city) of Chicago— The lot hereby intended to be conveyed, being the West half 1/2 of the East three fourths 3/4 in said Lot (6) in said block (17) and being thirty feet front (more or less) on Lake st. in said city, by one hundred and fifty (150) feet (more or less) deep, to the alley running through said Block (17) together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and property thereof, and also all the Estate, right title and interest, property, possession, claim and demand whatsoever as well at Law as in Equity, of the said party of the first part, of, in and to the above

described premises, and every part and parcel there-
of, with the appurtenances, to have and to hold, all
and singular, the above mentioned and described
premises, together with the appurtenances unto the
said Timothy Wright, and Ebenezer Peck, and their
successors, and their successors shall be appointed as
follows, viz- in case of the death of either of the said
parties of the second part, or their, or either of their
neglect or incapacity to act as Trustees in the premises,
then the said Sarah L. Wright shall appoint by an
instrument in writing, properly acknowledging in the
same manner as is regarded of a femme sole in the
acknowledgement of Deeds, another Trustee, or other
Trustees, and the said Trustee or Trustees so appointed,
by the said Sarah L. Wright, shall notwithstanding
her coverture take, hold, and be invested with the
same right, title, interest, claim and demand, of, in
and to the said premises herein described, as if he, or
they had been mentioned or described in this deed
as the original grantee or grantees herein, and the
said premises herein described had been conveyed or
deeded to him or them directly in Trust nevertheless
and to and for the several uses and purposes hereinafter
mentioned -

First - In Trust to lease the same, and to collect, take
and receive the rents, issues and profits thereof, and
out of the same, to keep the said premises in good order
and repair, and properly insured, and to pay all taxes,

assessments and charges, that may be imposed thereon - Secondly In Trust, to pay the residue of said rents, issues and income to the said Sarah L. Wright, upon her sole and separate receipt, to the intent that she may enjoy, possess and have the same, free from the control, interference and liabilities of the said parties, during the term of his and her natural lives - Thirdly in Trust, to convey the said lands and premises in Fee simple absolute, to the said Sarah L. Wright, her heirs and assigns, upon the death of the said grantor, in case she shall survive him, and the said lands and premises when so conveyed to the said Sarah L. Wright, shall be in lieu, and instead of all her right, title and interest, of, in and to all the Real Estate of which the said party of the first part, may die possessed, but shall not in any manner whatever, affect her right to, or interest in any of the Personal Property of whatever kind, which he, the said party of the first part, may own, or be possessed of, at the time of his decease - and in case the said Sarah L. Wright shall not survive the said party of the first part then and in that case, the said lands and premises shall revert to the said party of the first part, and to his heirs - to his, and their sole use, benefits and behoof forever, and the said party of the second part, do hereby signify their acceptance of this trust, and do hereby covenant and agree to and with the said party of the first part, faithfully to discharge the same according to the true intent and rendering of these presents — In witness whereof, the said party of the first part, and the said party of the second part, have hereunto set their hands and seals, the day and year first above written —

Sealed and Delivered in presence of

Edward Wright (seal)
Timothy Wright (seal)
Ebenezer Peck (seal)

State of Illinois }
County of Cook } ss.

I, Charles B. Hosmer, a Notary Public, in and for the said County, in the State aforesaid, do hereby certify that E. Wright, T. Wright and E. Peck, who are to me personally known to be the real persons whose names are subscribed to the within Deed, appeared before me this day in person, and severally acknowledged that they had executed the same freely and voluntarily, for the uses and purposes therein set forth —

Seal

Given under my hand and Notarial Seal, this 27th day of November, A.D. 1854.

C. B. Hosmer, N. P.

✱ The following endorsement appears on the back of said deed, to wit: "State of Illinois } No 55091 County of Cook } Filed for Record November 27th 1854 & Recorded in Book 86 of deeds page 657 L D Hoard Clerk"

✱ — To this deed, the plaintiff objected at the time, but the Court overruled the objection and admitted the deed in evidence — To which the plaintiff, at the time, excepted —

The defendant then called the aforesaid Charles

H. Peck as a witness, who testified as follows—
The Building in question was on the ground described in the deed, and partly on the adjoining ground—
Mr. Wright, the plaintiff, had sold four feet off one side of the Lot mentioned in the deed, and bought two feet on the other side, so that the building covered these two feet— The affidavit of E. Peck was here introduced as evidence, and shewn to the witnesses, which is in the words and figures following—

E. Peck's aff.

"To the Liverpool and London Insurance Company.

Ebenezer Peck of the City of Chicago, in the State of Illinois, maketh oath that on the morning of the nineteenth day of this instant month of October, the five story brick Store with Stone front, situated near the centre of Lot six, Block seventeen, Original town of Chicago, Illinois, Nos 114 & 116. Lake Street, was lost or destroyed by fire, that said fire was communicated to the rear part of said building (as this deponent is informed and verily believes) from a fire previously existing in Buildings on S. Water Street, the rear of which Buildings on S. Water Street, came near to the rear of said building numbered 114 & 116. being separated therefrom by an alley eighteen feet in width, that this deponent believes said fire so communicated, soon spread through and over said building, and destroyed and consumed the same, except a small part of the front wall, which is left standing, to the third story, but of what use it may be, if any,

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in the restoration of said building, this deponent cannot say, but he believes the said wall so left standing will require to be taken down before the building can be rebuilt— That this deponent considers the loss of said building is total—

The said building was insured in Atlantic Insurance Company of Brooklyn, New York— The Aetna Insurance Company of Hartford, Conn. and the Garden City Insurance Company of Chicago, for the sum of fifteen thousand dollars, five thousand dollars in each of the said companies— That the whole value of the subject, or building insured, was, just prior to its destruction, and at that time, of the value of twenty-five thousand dollars— The said building was leased to J. B. Shay, for a dry goods store, and the said J. B. Shay had let or leased the second Story of said building, to Messrs. Webster and Gage, dealers in Ribbons, Lace Goods and Millinery—

The policy of the Liverpool and London Insurance Company, was numbered 109.190, was for the sum of Five thousand dollars, on the five Story Brick Store with Stone front situated near the centre of Lot six, Block Seventeen, Original Town of Chicago, Illinois.

Nos. 114 & 116. Lake Street—

$5000. Sept. 6th/56. to Sept. 6th/57. at 95 cts		$47.50
Carpenters risk 30 days expires Oct 6th/56.		15
	Policy—	—
		$62.50

Carpenters risk extended for 15 days, from Oct. 6th to

67 Oct. 21st 1856. premium for the same, being $7.50.
March 27th /57. received $2.50 for one new hazardous tenant more — And afterwards on the ninth day of September, 1857. the said policy was continued in force for one year, to wit, from the ninth day of September, 1857. to the ninth day of September, 1858 at 6. P.M. That the loss upon said property was Twenty Thousand Dollars, or more, and that there was not any other Insurance thereon, than is herein mentioned — I do further affirm that I hold the said property, with Timothy Wright, as trustee of Sarah L. Wright.

Subscribed, and sworn to
this 23rd October, A.D. 1857. } E. Peck.

C. B. Hosmer, Notary public —

State of Illinois }
County of Cook } ss.

I, C. B. Hosmer, a Notary public, residing contiguous to the property, herein before described, certify that I am not concerned in the loss or claim above set forth, either as a creditor, or otherwise — that I have examined the circumstances attending the fire as alleged — that I am acquainted with the character and circumstances of the insured, and verily believe that he really and by misfortune, and without fraud and evil practice, hath sustained by such fire, loss and damage to the amount herein mentioned —

In testimony whereof, I have hereunto set my hand, and official seal, this 23rd day of October

A. D. 1857.

C. B. Hosmer, Notary Public.

I, John H. Kinzie, being duly sworn, depose and say that the above is a true copy of the proofs of loss as served upon me as Agent of the Liverpool & London Insurance Company, for loss as therein stated, which proofs were so served on, or about the 23rd day of October, 1857. that I have carefully compared said Copy with the original, of which it purports to be a copy, and that it is a true copy of such original -

J. H. Kinzie -

Seal

Subscribed and sworn to, before me, this Thirty-first day of Oct - 1857. by John H. Kinzie, Esqr.

W. P. Lounsbury
Notary Public.

To the introduction of this affidavit, the plaintiff objected at the time, but the Court overruled the objection, and the plaintiff excepted at the time - Witness then said - That this affidavit of E. Peck, was made under the policies referred to in the Policy here sued on - Those policies were in

+ the name of E. Peck and T. Wright, as trustees of Sarah L. Wright - This testimony was objected to at the time, the objection was overruled, and the plaintiff excepted at the time -

The insurance on the policies mentioned in the policy given by defendant, was paid to the plaintiff - I renewed those policies when they expired - I paid the premiums with money belonging to the plaintiff - I can't.

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say whether the money used for that purpose, was derived from the rents of the building, or not- I had money of the plaintiffs, obtained from rent of that building- from other rents, from sale of stocks and from notes collected, I kept it all together- I collected the rent of that store, for plaintiff- gave receipts in his name, and used the money as his- I never acted as Agent for the Trustees in this matter- They never had anything to do with the store, to my knowledge- I did not consult them as having any interest in the store, only consulted with the plaintiff- I did not take out those other policies in the name of E. Peck and F. Wright- don't know who did so- They were in the safe which we all used, and when they ran out, I renewed them- The premiums were paid out of money in my hand, belonging to the plaintiff- I paid out on this building for the plaintiff, about \$16 000.00 The plaintiff was in Europe at the time that I renewed those policies to Peck and Wright, as trustees- I wrote to him that I had done so- I know that the plaintiff received a part of the insurance money on those policies I know that he received \$12 000. dollars- I have every reason to believe that he received the rest- I suppose he knew of those policies, before he left Europe- Those policies were upon the same property mentioned in the policy of the defendant.

On Cross Examination, questions by Plaintiff's Counsel- State whether or not this building was put upon this lot, with the knowledge and consent of the Trustees.

+ To the answering of which question, the defendant, by his counsel, at the time, objected - But the Court overruled the objection, and the defendant then and there excepted to this ruling of the Court -

Witness then answered, that it was built there, by the consent of the trustees, and with their knowledge and further stated that the building was commenced in March, 1856. and completed in October, 1856. The trustees knew of my collecting the rents on the property, for the plaintiff, and that I appropriated them to his use - They never interfered in any way, or expressed any dissent - Mrs. Wright, wife of Plaintiff, + and Cestui trust in said trust deed, was in Europe at the time, with her husband, the plaintiff - I paid the money I received on drafts drawn by the Plaintiff, while he was in Europe -

(Direct Examination resumed)

I know that the plaintiff got the money on those other policies, I was with him when he got the greater part of it - Mr. Van Buren represented himself to me to be the agent of the defendant - He said that he had several good companies and mentioned defendant's company, as one of them - This Policy of the defendant was received by me from Mr. Van Buren - I was present at a conversation in my office a few days after the fire, and heard Mr. Cox, the president of the defendant's company, say that the defendant had never received the premium, but that they made no

71. point on that, as it had been paid to Mr. Van Buren. That Mr. Van Buren was not their regular agent, but that he had acted as their agent in this matter. That he had written to them for this policy, and referred them to the Astor Insurance Company. That they had made inquiries of the Astor Ins. Co. and became satisfied with regard to him. I told Mr. Van Buren about the title to the property. I told him that I intended to effect an insurance for $5000. That he had better go and look at the premises and examine for himself. I went to see him afterwards, and got the policy, and paid him the premium. I told him we called the store the store Mr. Wright's store, but that strictly speaking perhaps it was not so, as the property was held in trust for his wife. He said that made no difference, that was all right. This all occurred with Mr. Van Buren in regard to the cancelled policy in the providence Washington Co. When the policy was changed into the defendants' Co. I asked Mr. Van Buren if I should take any further steps in order to have it all right, he said no, that he knew all the facts, and would fix it all himself. That diagram and application were made out by him I suppose. I know about those affidavits of the Master Builders, in regard to the value of the property, I procured them because one or two of the Insurance Companies, wanted them. Mr. Cox said that the loss was not $20.000.00 that the building could be pu

up for $18.000 to $19.000. He was shewn the vouchers for the expenditures, and also a list of them in a book— He picked up the vouchers, but did not examine them, he ran his eye over the list of them— He said that he was satisfied we had acted in good faith, but was unwilling to pay anything until the matter about the trust deed was settled—

van Buren. The defendant then introduced as a witness, A. H. van Buren, who being sworn, testified as follows— That he made out the application and diagram, and the letter now shown him, and sent them to the defendant— That he obtained this policy sued on from from the defendant in New York, by sending said application— The Insurance did not take effect until I delivered the policy— I was acting as an Insurance Broker, I sent for this policy at my own instance, I first took a risk on that Building in another Company of which I was agent— I asked consent to cancel that, and substitute this policy for it— Mr. C. H. Peck consented to this, and I wrote to defendant, sending an application to them for the risk— I was the Responsible party acting for both— I was not the agent of the defendant— I was not their agent before I received this policy—
× I submitted to them the risk for the plaintiff— which they accepted, and sent me on the policy, which I delivered— The plaintiff's agent paid me the premium, by paying me the difference for the time

73. the first policy had already run, and surrendering up the first policy — I had an account with the defendant, had taken risks, and at various times, remitted them money — I dont think I have paid the defendant the premium on the policy sued on — But all my intercourse and business with them
+ previous to the Policy sued on, was carried and transacted through third parties — and not directly between myself and the defendant —

Cross examined — I did not submit the application and diagram to Mr. Peck, before I sent them — I had previously effected one or two insurances with the defendant —

The defendant then introduced the following written evidence — The Diagram, application and letter spoken of by Van Buren, which are in the words and figures following; to wit —

No 29.991

Chicago, March 17. 1857

Horatio Dorr Esq. Secy.

Atlantic Ins. Co. Mp.

Dear Sir,

I hand you a risk of \$5000. per diagram and survey, which I will thank you to send me a policy for — viz — Edward Wright \$5000. 1 year @ 1^{05} \$$52^{50}$. as other tenants go into the upper stories an additional rate will be charged — I have received two policies from you,

[12301-37]

through the Aetna Ins. Co. and as I am constantly obliged to send to your city for policies, I will be glad to correspond with you, if agreeable—

The writer had the pleasure of seeing you in New York, in 1853 when he lived in Cincinnati—

Your's truly,

A. H. Van Buren

Atlantic Insurance Company. Brooklyn—

Rate of Premium 1 05

In consideration of 52 50 do insure Edward Wright against loss or damage by fire, to the amount of Five thousand dollars— on his five story brick, stone front building, occupied on the first floor as Retail Dry Goods Store, and in 2nd Story as Wholesale Millinery Store, situated on the North Side of Lake Street, Nos 114 & 116. between Clark and Dearborn Streets, in the City of Chicago, Illinois—

$5000 Insured in the Aetna Ins. Co. Hartford—

$5000 " " " " Liverpool & London Ins. Co. Liverpool

$5000 " " " " Garden City Ins. Co. Chicago, Ills.

Subject to additional charge for tenants according to rates adopted by Chicago Board of underwriters

For one year from the 20th day of March, 1857. to the 20th day of March, 1858.

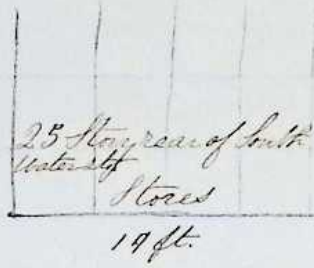
Survey—	Agent—
1. Building. Is it stone, brick, or wood? How many stories high?	1. Brick five stories high— Stone front. Wooden Cornice—
2. Walls. Party or division, are they brick?	2. Brick—

Agents must be particular, and fill this Survey-

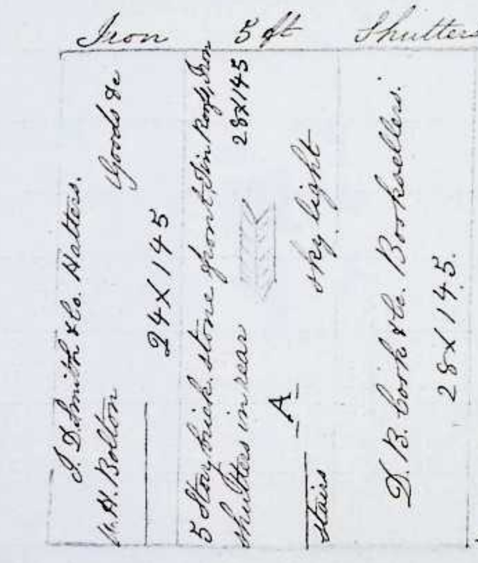
75. How thick?	16 inch & 12 inch at top-
Are they entire?	Yes-
Do they rise above the roof?	Yes- at least six inches-
Are there any wood subdivisions?	No. the floors are each finished in one room 28 x 145. except stairs at sides, to upper stories front and rear-
3. Roof. What is it covered with?	3 Metal (Tin)
Is there a scuttle and stairs to it?	Yes.
4. Gutters Are they stone, metal or wood?	4.
5. Stoves- If used, how many?	5 2. One in 1st + one in 2nd Story-
What is under them?	Zinc-
6. Pipe. Is it in good order?	6 Yes.
How near does it come to the wood?	6 feet.
Does it enter a chimney?	The pipes enter chimney built from the ground, and are some feet below the ceilings, which are plastered-
Is the chimney built from the ground?	
7. Fuel- What kind is used?	7- Coal.-
8. Ashes- How are they disposed of?	
9- For what purpose is the building used?	9. Retail Dry Goods Store on 1st floor Millinery on 2nd floor
How many tenants?	Two tenants- 3, 4 & 5, floors are vacant-
10- Distance of other buildings?	10- in Row-
What class?	Same class.
How occupied?+	See diagram-
11- What is the present cash value of the property to be insured?	11- $ 25.000.
12 What other insurance, if any, is there upon the property, and at what office?	12. See above.
13- What incumbrance, if any, is now on said property?	13. None.

° If the building is of wood, no answer need be given to the interrogatories respecting Walls, Subdivisions, Roof and Gutters

+ The description may be in writing, or by a diagram-



Alley 18 ft



These three buildings were erected together, and finished last fall—they are of same class, and are finished very well with basement and five stories—

Then a letter from Horatio Dorr, Secretary of the defendant, in the words and figures following—

Atlantic Fire Insurance Company of Brooklyn. L. I.
Branch Office, No 14. Wall Street, New York.
(Copy)

Dec. 4. 1857.

Edward Wright Esqr.
Chicago. Dear Sir,

Our Agent at Chicago, advises us of your calling on him in relation to the late loss in your City – If desirable, you might address us here.

Your's Respectfully –

(signed) Horatio Dorr Secy.

And also a letter from plaintiff to said Dorr in the words and figures following to wit –

Chicago Dec. 14th 1857.

Horatio Dorr. Esq.

Dear Sir,

Your note of December 4th is just received; In reply I would say that I am anxious to have the loss covered by your policy of insurance, adjusted as soon as possible – The sixty days after notice and proof of loss, will expire on the 23rd inst. Five thousand Dollars ($5000) will therefore be due me on that day, and I should be glad to know in what manner, the Atlantic Company will pay it – Hoping to receive an early reply, I remain

Very Restfully

your obt. servant,

Edward Wright.

Also a letter from said Dorr, to plaintiff, in the words and figures following –

(Copy)

Atlantic Fire Insurance Co. of Brooklyn

to Office No 14. Wall Street.

Edward Wright Esq. New York. Dec. 18. 1857.

Chicago Dear Sir.

Your 14 inst was duly received In reply

we would state that we received what purported to be Proofs of Loss on the property destroyed at Nos 114 & 116 Lake st. But the Proofs so received are not made clearly, nor are they in accordance with the requirements of our Policy. We must ask a new sett of Proofs made in accordance with Article 9th of the "Conditions" of Insurance, herewith enclosed for your guidance. We also find that the proofs of loss on the same building made to the London & Liverpool, Garden City and Aetna Cos. were made out differently from ours, and to another party, and that these companies have settled their loss, not deeming us held as co-insurers with them.

In the remarks above made, and the requirements proposed to you, we wish you to understand our object to ascertain if our Company has made a legitimate loss. and if so, to whom we are bound, under the Policy, to pay that Loss, and we respectfully request for a communication by Letter, or should be pleased to see you here, in relation to the matter.

Your's Respectfully
(signed) Horatio Dorr. Secy.

Also a letter from Plaintiff to Dorr, in the words and figures following, to wit:

Chicago Dec. 28th 1857.

Horatio Dorr, Esqr.
New York.
Dear Sir,

Your's of the 18th inst. is before me.

79. Of course I have no objection to make such proof of loss, on my policy, as may be necessary, and as the facts will justify - Mr. Cocks, when he was here, and Mr. Atwater, your agent, have both expressed themselves satisfied with the proof offered you - which is, as I am informed, as nearly similar to that which was accepted by the other companies, as it was possible to make it - I do not know what fact you desire to have further elucidated, and which I can supply - If I knew what you wished, I would endeavor to comply with it - Two of the other companies have paid in full - The Garden City which was on the spot, paid in full before the expiration of the sixty days - The Aetna has also paid in full - The London & Liverpool have paid $3500. on account, and propose to pay in full, and as I am informed, the officers of the latter company, have expressed the opinion that your objection to paying, is altogether too technical - How technical this objection is, is left to my conjecture -

Mr. Cocks was fully informed of everything connected with this insurance, while he was here, and I am at a loss to know why you delay payment - The insurance with your company was made under circumstances of which you are fully advised -.

My brother Mr. Timothy Wright will soon be in New York, and is authorized to sign any receipts for me in the premises -

This insurance was effected with your company, in the most perfect good faith in every particular, and as my loss has been very severe, I am anxious to have the matter speedily adjusted, and I cannot see any good reason for procrastinating it—

Very Respectfully—

Your obedient servant,

Edward Wright

all of which were read as evidence to the jury, without objection—

\+ And this was all the evidence in the Cause, and thereupon after argument of the Cause, the Plaintiff asked the Court to give the jury, the following instructions, which the Court gave in the words and figures following—

1st If the Jury shall believe from the evidence that the plaintiff, with the consent of the trustees, took possession of the land, and for the purposes of trade, built and paid for the building with his own money, and upon its completion, took possession of the building, and leased the same in his own name, and thereafter received the rents to his own use, and that all of these acts were done with the previous and continued knowledge and consent of E. Peck and Timothy Wright, the trustees, and without objection or interference on their part, to the time the building was burned, they will be at liberty to find that the plaintiff was the owner of the building, unless they shall further believe that said building was erected with an intention that it should be for the benefit of the trust created by the

Given

we would state that we received what purported to be Proofs of Loss on the property destroyed at Nos 114 & 116 Lake st. But the Proofs so received are not made clearly, nor are they in accordance with the requirements of our Policy. We must ask a new sett of Proofs made in accordance with Article 9th of the "Conditions" of Insurance, herewith enclosed for your guidance. We also find that the proofs of loss on the same building made to the London & Liverpool, Garden City and Aetna Cos. were made out differently from ours, and to another party, and that these companies have settled their loss not deeming us held as Co-insurers with them.

In the remarks above made, and the requirements proposed to you, we wish you to understand our object to ascertain if our Company has made a legitimate loss. and if so, to whom we are bound, under the Policy, to pay that Loss, and we respectfully request for a communication by Letter, or should be pleased to see you here, in relation to the matter.

Your's Respectfully
(signed) Horatio Dorr. Secy.

Also a letter from Plaintiff to Dorr, in the words and figures following, to wit.

Chicago Dec. 28th 1857.

Horatio Dorr, Esqr.
New York.
Dear Sir,
Your's of the 18th inst. is before me.

77 loss in your City - If desirable, you might address us here.

Your's Respectfully -

(signed) Horatio Dorr. Secy.

And also a letter from plaintiff to said Dorr - in the words and figures following to wit -

Chicago Dec. 14th 1857.

Horatio Dorr. Esq.

Dear Sir,

Your note of December 4th is just received, - In reply I would say that I am anxious to have the loss covered by your policy of insurance, adjusted as soon as possible - The sixty days after notice and proof of loss, will expire on the 23rd inst. Five thousand Dollars ($5000) will therefore be due me on that day, and I should be glad to know in what manner, the Atlantic Company will pay it - Hoping to receive an early reply, I remain

Very Respectfully

your obt. servant,

Edward Wright.

Also a letter from said Dorr, to plaintiff, in the words and figures following -

(Copy)

Atlantic Fire Insurance Co. of Brooklyn -

to Office No 14. Wall Street.

Edward Wright. Esq. New York. Dec. 18. 1857.

Chicago Dear Sir.

Your 14 inst was duly received - In reply deed of the plaintiff, to Peck and Wright, for the benefit of Sarah L. Wright –

Given

2. That in determining whether the building was erected with an intention that it should be the property of the trustees, or his own property, the Jury may take into consideration, evidence tending to show whether the building insured, was built and paid for with his own money, and whether upon its completion, he took possession of the building and leased the same in his own name, and received the rents to his own use, and whether after the fire, he received the insurance money thereon; and all other evidence in the case, (if any) conflicting with these facts, and tending to establish the contrary, and if from the evidence, the jury shall believe that the plaintiff built the building with an intention that it should be his own property, and that the trustees knew of this intention, and consented to his taking possession of the land, and made no objection to the acts of the plaintiff, but consented thereto, and approved thereof, down to the time of fire, they will find that the plaintiff was the owner of the building insured and was seized of some interest in the land sufficient to enable him to assert his claim to the building, as his property –

3. That if the jury shall believe from the evidence, that the plaintiff furnished preliminary proofs of the loss and that such preliminary proofs were acknowledged

by the Agent, and President of the defendants to be satisfactory, it was the duty of the defendant, if it desired further preliminary proofs, to request the plaintiff to make the same within a reasonable time and to point out specifically the further proof required, and if the evidence shows a failure on the part of the defendant, in this respect, the law precludes the defendant from making any objection to the sufficiency of such preliminary proofs—

Given

To the opinions of the Court in giving said instructions and to the giving of each of them, the defendant at the time, severally excepted, and then the defendant asked the Court to give to the Jury the following instructions, to wit—

Defts Instns: 6th

Refused, because embraced in other instructions.

That if the Jury are satisfied from the evidence, that the defendants, under the representations of the plaintiff, or his agents, acting in the matter for him, executed the policy in the declaration mentioned, insuring the property therein named, as the sole, legal and absolute property of the plaintiff, and that in fact he was not the owner thereof—and that the plaintiff and his said agents knowing that fact, Concealed from the defendant, that he owned but a small fraction of said property—or that he owned but a small part of said property, and a contingent interest or a remainder after the death of a third person in the residue of said property—or that he held and owned but an equitable title to such remainder, and

83. owned absolutely only a small portion of said property) Or if the Jury believe that the plaintiff owned any interest less than an absolute or fee simple interest, and so as aforesaid, concealed that fact from the defendants and the jury at the same time believe that such concealment was material to the risk of said defendant in said insurance, or that the knowledge of such want of absolute property in the plaintiff, would have enhanced the premium, on said insurance, that then the plaintiff is not entitled in this suit, to recover for his said losses, in the said policy—

Refused. embraced in other instructions

13th. That if the Jury believe from the evidence that the property mentioned as insured, in the policy in the declaration set out, was consumed and lost by fire, as in said declaration is alleged, that then, unless they are further satisfied by the evidence, that the plaintiff gave notice of such loss in writing to the Company, and delivered as particular an account of his loss and damage as the nature of the case would admit, signed by his own hand, and accompanied the same with his oath or affirmation declaring said account to be true and just, the plaintiff cannot recover on the said policy in this suit, for his alleged loss—

No 20 Refused

If the jury believe from the evidence that the three policies named in the policy in question, were insurances upon the building in question, as the property of E. Peck and Timothy Wright, as trustees for Sarah L.

{12421-42}

Peck, and not as the property of Edward Wright, the plaintiff, as represented in the Policy in question then such representation was false, and vitiates the policy in question, and the plaintiff cannot recover—

No 21 If the jury believe from the evidence that Van Buren obtained the Policy in question, by and under an arrangement between him and plaintiff's agent, for Mr. Wright, and that Van Buren testified truly, he was not the agent of the defendant, and this was the only policy he had personally obtained from the defendant— then he was not in fact Defendant's agent, but was agent of Wright— and his failure to pay over the money to the defendant, is Wright's failure—

Refused

No 22. That if the jury believe from the evidence that the title to the Lots or ground, upon which the property insured was held by Ebenezer Peck and Timothy Wright, in trust, for the use of Sarah L. Wright &c. at the time of the insurance and loss alleged in the declaration, and that the Plaintiff had no present estate or term in the said lot of land of any kind whatever, and that the money which was paid for the building which was erected thereon, and insured and lost, came from and was paid by the plaintiff, and that the said building was placed there with the knowledge and consent of the said Trustees, of said Lot of Land— That then these facts do not make the plaintiff, the owner of said house.

Refused

No 23. That if the jury believe from the evidence, that one A.

85. H. Vanburen proposed to the agent of the plaintiff to get a policy for $5000 of the defendant on the property for the loss of which, the plaintiff seeks here to recover, and that the agent of the plaintiff consented thereto, and authorized the said Vanburen, to procure said policy, and that said Vanburen in consequence thereof, wrote on to the defendant, requesting it to forward to him, such policy, and that the defendant did accordingly forward to Vanburen, the policy in the declaration mentioned, and if they further believe from the evidence that the plaintiff accepted and received said policy, and gave the amount of the premium on said insurance to said Vanburen, to be paid to the defendant - and that this was all the connection of any kind, the said Vanburen had ever had with the defendant, and that Vanburen has never paid the said premium to said defendant, and that no other payment or offer of payment has ever been made of said premium, that then such facts, and the delivery of the premium as aforesaid, to Vanburen, under the circumstances aforesaid, do not amount to a payment of the said premium, to the said defendant, as is required by the 2nd clause or section of the "Conditions of Insurance", annexed to the policy declared on here - and that by virtue of said "conditions of Insurance", the said insurance is not binding until the said premium has been actually paid -

Refused

But the Court refused to give said instructions or either of them to the Jury - To which opinion, of the Court, refusing to give the last mentioned instructions, and each of them, the defendant, at the time, severally excepted - The defendant also asked the Court to give the following instructions to the jury, to wit -

3d That if the Jury are satisfied from the evidence (that the plaintiff was not the absolute owner of the building insured, and) that the plaintiff, or his agents, acting for him in their application for, and representation in procuring the defendant to execute the policy declared on in this suit, concealed from the defendant, the true amount and character of his interest in the property insured by said policy - that then in this action and upon the policy declared on, the plaintiff cannot recover for his alleged losses -

Given

5th That if the Jury are satisfied from the evidence that the defendant executed the Policy in the declaration mentioned, under the belief derived from the representations of the plaintiff, or his agents in the matter, That the plaintiff was the owner in absolute property, of the thing whole of the said property insured ~~a~~ ~~in~~ and that in fact, he was not the owner thereof, and that the plaintiff and his said agents knowing that fact, concealed from the defendant the fact that he owned but a small portion, or but a contingent or reversionary interest, or but an equitable title to such small portion or contingent or reversionary interest, *if such is shown by the evidence,* ~~[illegible]~~ ~~separate and distinct ownership of the building,~~

Given

That then the plaintiff cannot recover for his alleged losses in this action, upon said policy—

9th" That if the Jury believe from the evidence, the property insured and set out in the declaration, was at the time of making said policy, and at the institution of this suit, held in trust, *and was not the plaintiff's property* and that the same was not by the said policy insured as such property held in trust, that then under the said policy, the plaintiff cannot recover in this action for his alleged losses—

Given

10th That in case of the loss of the property insured, as set forth in the declaration, it was the duty of the plaintiff, by virtue of said policy, if he desired to recover for said loss of the defendant, to set forth in the preliminary proofs of such loss, the names of the respective owners of the said property insured by said policy, together with their respective interests therein, and that unless the Jury are satisfied from the evidence, that the defendant did so set forth in the said preliminary proofs—he is not entitled to recover in his suit, *unless the jury shall find that the defendants were satisfied with the proofs furnished, or did not object thereto, within a reasonable time.*

Given

16th If the Jury are satisfied from the evidence, that the plaintiff *was not the owner of the property insured,* and falsely represented or concealed from the defendant the true extent and nature of his interest in the property insured, and that the nature of his said interest

Given

[12721-41]

would have, or might have had a real influence upon the defendant in making said policy of insurance, so as either to have induced them not to insure said property at all, or if they did, to do so at a higher premium than charged - That then the Jury ought to find for the defendant -

15th " If the Jury believe from the evidence that the plaintiff, in his preliminary proofs, made and sent to the defendant, did not set forth and ~~know~~ show the plaintiff's interest in the property insured, and failed to make such proofs when required by the defendant so to do, and not do before this suit was brought, then the plaintiff cannot recover in this action - and they ought find for the defendant - *unless the jury shall find that such proofs were waived, and that there was an unreasonable delay on the part of the defendant, in requiring additional proofs.*

Given

18th " If the Jury believe from the evidence, that the Plaintiff, at the time the Policy was made and delivered, ~~he~~ had a less estate than the absolute ownership of the whole lot covered by the building in question, *and held no separate legal and absolute ownership in the building,* and the same was not disclosed in the application of the plaintiff to the defendant, for insurance, they must find for the defendant -

Given

Which instructions, and each of them, the Court refused to give, but altered and modified the same. (The alterations and modifications made by the court, are written in red ink & underlined with the same, in this record)

To the opinion, of the Court, thus refusing to give said instructions as they were asked as aforesaid, and each of them, and to the giving them & each of them as they were modified, changed and given by the Court, the defendant severally excepted at the time—

And thereupon the Jury retired to consider of their verdict, and returned into Court with the following verdict—

Verdict.

"We the Jurors find for the plaintiff and assess the damages at $5,166 33/100."

A. P. Hayward—Foreman

And thereupon the defendant then and there moved the Court to set aside the verdict of the Jury, and to award the defendant a new trial, for the following reasons—

Atlantic Ins. Company } Assumpsit.
ads }
Edward Wright } Motion for N. T.

The defendant moves the Court for a new trial in this cause, upon the following grounds, to wit—

1st Because the verdict of the Jury is against Law—

2nd Because the verdict of the Jury is against the evidence.

3rd Because the Court erred severally in each and every of the instructions given to the Jury, as asked by the plaintiff's attorney—

4th Because the Court erred in refusing to give the 6th 13th instructions as asked by the defendant's attorneys

[12721-112]

5th Because the Court erred in its amendments to the defendants 3rd 5th 10th 15th 16th 18th instructions, and in refusing to give them as severally asked, without the amendments made by the Court-

Morris, McComas & Co. for Deft-

And thereupon the Court took time to consider of the motion for a new trial, until the 15th day of the November term 1858. of this Court, when the Court overruled said motion for a new trial, to which opinion of the Court so overruling said motion, the defendant then and there excepted- And the defendant then and there prayed the Court to save to him the benefit of his several exceptions aforesaid, and to sign, seal and make part of the record, this, his bill of exceptions, which is accordingly done-

George Manierre (seal)
Judge of 7th Judicial Circuit,
Illinois

And afterwards, to wit- on the 14th day of December, in the year last aforesaid, the said defendant filed its certain appeal bond, which is in the words and figures following, to wit-

Know all men by these presents- that we, the Atlantic Insurance Company of Brooklyn, New York, and Samuel M. Johnson, and John H. Stafford, of Chicago, Illinois, are held and are firmly bound unto Edward Wright of Chicago, in the penal sum of Eleven Thousand Dollars, to the payment of which

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~~Edward Wright~~

vs

Atlantic Insurance Co.

vs

Emerson Wright

Receivers

Filed April 13. 1859
L. Leland
Clerk

91.

well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, successors, executors and legal respresentatives - sealed with our respective seals, and signed by the President of said Corporation, and attested by the Secretary with the Official seal thereof, hereto annexed, this Twenty-third day of November, A.D. 1858.

The condition of the above obligation is such, that whereas the said Atlantic Fire Insurance Company of Brooklyn, has taken an appeal from a certain judgment rendered against it, in favor of the said Edward Wright, in the Cook County Circuit Court of the State of Illinois, at its present November term thereof, A.D. 1858. for the sum of Five Thousand, One Hundred and Sixty six 87/100 Dollars Damages - besides his costs in that behalf expended, to the Supreme Court of Illinois, to be holden at Ottawa, in the Northern Judicial Division of this State. Now therefore if the said Insurance Company shall pay the said judgment, costs, interest and damages in case the judgment aforesaid shall be affirmed, and shall prosecute said appeal without unnecessary delay, then this obligation shall be void otherwise to remain in full force and virtue in Law.

Seal

John L. Cocks. President -

Horatio Dorr. Secretary -

John H. Stafford (seal)

S. M. Johnson (seal)

[10921-97]

Taken and acknowledged before
me, this 30th December 1858.

Wm L. Church, Clerk

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

I, **WILLIAM L. CHURCH,** *Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of* the pleadings proceedings had & entered of record bill of exceptions & appeal bond *in a certain cause* lately *pending in said Court on the* Common law *side thereof, wherein* Edward Wright was Plaintiff *and* the Atlantic Fire Insurance Co. of Brooklyn were *defendent*

IN WITNESS WHEREOF, *I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this* Seventeenth *day of* March *A. D. 18*59

Fees for Record $23.00

Wm L. Church
Clerk.

Illinois Supreme Court. 3d Division. April Term 1859.

The said Atlantic Insurance Company, assigns for error to its prejudice in the foregoing and annexed record as follows. to wit.

First. p. 29. 30. The Circuit Court erred in proceeding to trial, verdict and judgment thereon - leaving the Appellants fifth Plea unanswered & undisposed of in any way by the Court: on which judgment should have been rendered for the Appellant in bar of the action.

Second. p. 89. The said Court erred in giving judgment upon the verdict - it being defective, in not being formed in the words of the issues; nor responsive thereto.

Third. 51. The said Court erred in allowing witness (Carter) to answer the question. viz. "Who built the House in question?" The avowed object, being to prove title thereto.

Fourth. 521. The said Court erred in allowing witness, Peck. to answer the question, viz. "What did the agent, Atwater, say about the proofs at the time of the delivery of them".

Fifth. p. 69. The said Court erred in allowing witness, Peck. to answer the question. viz. "State whether or not this building was put upon the lot with the knowledge & consent of the Trustees?"

Sixth. 80. 81. 82. The said Court erred in the instructions given to the jury as asked by the said Appellee, and in every member, branch, and part thereof.

Seventh. 82. 83. 84. 85. 86. The said Court severally erred in refusing to give to the jury the several instructions as asked by the Appellant and each of them severally.

Eighth 86. 87. 88. 89. The said Court erred in refusing to give to the jury 3d. 5th. 9. 10. 15. & 16th. instructions as asked by the Appellant, without the alterations and modifications thereof, made by the Court therein as appears written in red ink and in making each & every of said alterations, and modifications, and in giving the same to the jury so altered and modified, and in each & every branch & part thereof.

9th. The said Court erred in over ruling the Appellants Motion for a new Trial & in giving judgment upon the verdict for Appellee.

Wherefore the Appellant prays that said judgment may be reversed with costs &c.

By B. S. Morris & McConnell
its attorneys.

and now the deft comes
and says that there is no error in the record
and proceedings afsd & prays that judgement
may be affirmed

By his atty
C Beckwith

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STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, 1859.

ATLANTIC INSURANCE CO.
vs.
E. WRIGHT.
} *Appeal from Cook.*

POINTS AND AUTHORITIES FOR APPELLANT.

BY W. B. SCATES,

Counsel for Appellant.

Filed May [illegible] 1859
[illegible]
Clerk

STATE OF ILLINOIS, SUPREME COURT,

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ATLANTIC INSURANCE CO. *vs.* E. WRIGHT. } *Appeal from Cook County.*

In presenting an additional argument to Judge Morris, I purpose to press more at large two points upon the attention of the Court, namely:

1st. That there was neither a reversion nor a remainder, contingent or otherwise, left in the grantor, E. Wright, under the deed of trust; and,

2d. That whatever acts were done by Mr. Van Buren, in making out the application, &c., in this case, were done as the agent of the assured, and not of the insurers.

I.

First, then, I will examine the provisions of the deed of trust.

The following clauses disclose the objects of the deed, and the interests of all the parties to it:

The deed recites that he wishes to make provision for his wife, Sarah L. Wright, for her maintenance and support, and that "his said wife should enjoy the proceeds, rents, issues and income of the real estate." Grants the lands in fee to Peck and T. Wright, describing them:

"Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the *reversion* and *reversions, remainder* and *remainders, rents, issues*, and *property thereof*; and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, as well at law as in equity of the said party of the first part, of, in, and to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold, all and singular, the above mentioned and described premises."

For the following purposes: *First*, to lease the same, to collect the rents, keep the premises in repair, &c.; and, *Second*, to pay the balance to Sarah L. Wright, to her sole use as a *feme sole*, free from all control or accountability, or liability, during her *natural* life; and, *Third*, "in trust to *convey* the said lands and premises, in fee simple absolute, to the said Sarah L. Wright, her heirs and assigns, upon the death of the grantor, *in case* she shall survive him; and the said lands and premises, when so conveyed to the said Sarah L. Wright, shall be in *lieu* and instead of all her right, title and interest of, in, and to all the real estate of which the said party of the first part may own or be possessed of at the time of his decease."

"And, in case the said Sarah L. Wright shall not survive the said party of the first part, then, in that case, the said premises shall revert to the said party of the first part and to his heirs, to his and their sole use, benefit, and behoof forever."

Now here the fee simple absolute is unconditionally conveyed to the trustee. There is neither reversion nor remainder left in the grantor, for, where the whole estate is disposed of, there is neither reversion nor remainder. Whatever interest or estate, if any, is created for or to take effect in E. Wright under the provision of the trust declared in this deed, will arise under the conditions of the trust, and not as a reversion or remainder, as I will pecsently show by the definitions of a reversion and a remainder.

In disposing of the trust created and declared by this deed, the rents, issues, and profits are disposed of to the use of repairs and Mrs. S. L. Wright during her natural life.

In the second place, the trusts provide for the creation of a fee simple in Mrs. Wright upon a subsequent condition, viz: her *surviving* the grantor; and, thirdly, that upon breach of the above condition upon which Mrs. Wright's estate was to arise, a fee is created, not reserved, in the grantor. This is not a conditional limitation over of the fee, because the whole estate or fee had been conveyed to the trustees; but it is a conditional limitation over of the uses of the fee, and it would require a conveyance by the trustees to pass the legal title. There is no right of entry, as for a condition broken, for that simply prevented the creation of the conditional fee in the use, for the whole title is in the trustees, and no subsequent condition has defeated it, for it was not held on any conditions.

The estate and title in the trustees was absolute and unconditional; the trusts created by the deed only were conditional.

The second trust for conveyance of the fee to Mrs. Wright depends upon a condition precedent; and the third to the grantor is a contingent conditional limitation over of the fee, upon failure of the vesting of the first estate in fee in the trusts.

But we can better understand the nature of the expectation of interest in E. Wright, by a short summary of the doctrine of conditions and conditional estates, and as to what is a reversion and a remainder, and the difference between the latter and a limitation over of an estate.

"A condition *in a deed* may be *annexed to every species of estate* and interest in real property; to an estate in fee, in tail, for life, or years, in any lands or testament."

1 Greenlf Cruise, Title 13, Cap. 1, Sec. 9.
1 Hilliard on Real Prop., Cap. 27, Sec. 11, 12.

Here the words create a condition clearly.

2 Greenlf. Cruise, Title 32, Cap. 25, Sect. 62.
1 Hilliard R. Prop., Cap. 27, Sect. 1 to 15.

Conditions that are repugnant, or *malum in se*, or impossible at the time they are made, are void.

1 Greenlf. Cruise, Title 13, Cap. 1, Sect. 58.
1 Hilliard Real Prop., Cap. 27, Sect. 17, 20.

And so we may regard conditions against the principles, rules, and policy of the law.

1 Greenlf. Cruise, Title 13, Cap. 1, Sect. 18, 19, 20–29.

Conditions may be executed and executory, and they are express or implied, and precedent or subsequent.

1 Greenlf. Cruise, Title 13, Cap 1, Sect. 1 to 6.
1 Hilliard on Real Prop., Cap. 27, Sects. 8 to 9.

An estate, depending upon a condition precedent, will not vest until the condition is performed.

1 Greenlf. Cruise, Title 13, Cap. 2, Sects. 1 to 5–21.
See also Note 1 to Sect. 29.
1 Hilliard on Real Prop., Cap. 27, Sect. 1 to 7.

Estates vested may be divested and defected by breach of condition subsequent, upon re-entry or claim by the grantor or his heirs.

1 Greenlf. Cruise, Title 13, Cap. 2, Sect. 1 to 5.
1 Hilliard Real Prop., Cap. 27, Sect. 4 to 7.

Conditions may be excused by the default of the person to whom it is to be performed, viz: By tender and refusal. It is also excused, 1. By his absence in those cases where his presence is necessary for the performance of it; 2. By his obstructing or preventing the performance of it; 3. By his neglecting to do the first act, if it be incumbent on him to do it. He may also waive its performance or accept it at a subsequent time.

1 Greenlf. Cruise, Tittle 13. Cap. 2, Sect. 25, and Note.

Upon breach of a subsequent condition, the grantor or his heirs have a right to enter, and, upon entry for breach, the estate becomes void *ab initio*, with all intermediate rights, incidents, and incumbrances.

1 Greenlf. Cruise, Title 13, Cap. 2, Sect. 52.

Courts of equity have interfered to "moderate the rigor of the common law, in respect to the breach of conditions, upon the principle that equity ought to relieve against all *forfeitures and penalties wherever a compensation may be made.*"

1 Greenlf. Cruise, Title 13, Cap. 2, Sect. 29.

But Courts of equity will not grant relief against a condition broken, except in cases where the conditions was to pay money.

Ibidem; 1 Hilliard on Real Prop., p. 365, Sect. 33.
Hill vs. Braclay, 18 Ves., Jr., 62.
5 Viners Abridg. 29, Sect. 35.

If there can be *no compensation in damages*, a Court of equity will not relieve.

I Greenlf. Cruise, Title 13, Cap. 2, Sect. 35.

Where an estate is to determine upon the happening of any particular event, it will so determine without entry or claim, and that shows the distinction and difference between a limitation and a condition. For in the latter case the grantor must enter, make claim, or bring his suit.

1 Greenlf. Cruise, Title 13, Cap. 2, Sect. 44, 64.

Where re-entry is essential to re invest the estate in the grantor, that may be made by his attorney, or even a stranger, if he afterward assent to it.

1 Greenlf. Cruise Title, 13, Cap. 2, Sect. 39.
Fitchet vs. Adams, 2 Strange, 1128. Side.

Grant on condition that lot should be held for support of ministers of a certain church, and to be void for neglect to use the rents, &c., for that purpose, is broken by neglecting to keep up the church and a minister in it.

21 Pick. 215; Anstein vs. Cambridge.

Devise of land for school house, provided it be built within 100 rods of the church, is forfeited by neglect for twenty years to build it.

5 Pick. 528, Hayden vs. Inhabitants of Stoughton.

The interest of the grantor is devisable.

3 Tenn. R. 88, Jones vs. Perry.
5 Pick. 528; 21 Pick. 215.

It is no violation of the object of a grant for the erection of a court house, to occupy surplus parts with stable, garden, &c.

9 Cow. R. 72, Jackson vs. Pike.

Grant of land on condition that certain public buildings should be there erected. By an act passed afterward, the seat of justice was removed. Held that the land reverted.

18 Martin La. R. 221, Police, &c., vs. Reeves.

Deed contained this clause, "he, the aforesaid Benj. (grantee) Leek, his heirs and assigns forever, hereafter *allowing* all people to pass and repass," &c., and was held to be a condition.

15 Wend. 564, Parsons vs. Miller.

Conveyance with condition, "provided, however, this conveyance is upon condition that no windows shall be placed in the north wall of the house aforesaid, or of any house to be erected on the premises within 30 years," &c. Held that putting windows in the north wall within that time was a breach and forfeiture.

8 Pick. 284, 288 to 292, Gray vs. Blanchard.

Condition in deed was, that if grantee should fail to pay a certain mortgage, the deed was to "be and remain in all respects null and void;" a failure to pay the mortgage was held to defeat the estate.

2 Met. R. 498, Ross *et al.* vs. Tremain.

Conveyance upon condition that railroad should be constructed thereon within a limited time. Held that it was a condition subsequent; that a mere failure to build road does not divest the estate without entry.

Held that this right of entry is not a reversion or an estate in the land; that it will not pass by assignment or by a conveyance of the premises held subject to the condition; and that conditions subsequent can only be reserved for the benefit of the grantor and his heirs, and that no other person can take advantage of the breach.

2 Kernan R. 121, Nicoll vs. N. Y. &. E. R. R.
Same case. 12 Barb. S. C. R. 460.

Conveyance on condition that lands should be forever and exclusively used as a public square, and that city of N. York should *immediately* proceed to regulate the grounds and enclose the square in two parallelograms, with a railing similar to the one which should be placed around Union Place, and should plant and improve such enclosures similar to the improvements made in Washington Square; to be void if the lands should ever thereafter cease to be used as a public square. Held that grantor had a right to re-enter for breach of these conditions, and that these conditions or covenant for these objects was a *continuing* one.

Stuyvesant vs. City N. York, 11 Paige R. 414.

Condition in deed from the State that grantee shall forfeit and lose all right, if he do not regularly list the land for taxation and pay taxes.—Held that breach will defeat title, but that an entry is necessary.

Phelps vs. Chesson, 12 Iredell R. 198-9.

Conveyance on condition that grantee will support a certain person; a failure to support the person is a breach which will defeat the estate, but it is necessary to re-enter, and this cannot be done by a stranger to the deed.

Cross et al. vs. Carson, 8 Blackf. R. 138.
Willard et al. vs. Henry, 2 N. Hamp. 120.

Deed on condition to keep a saw and grist mill on, in operation, the premises in good repair; estate is forfeited by breach in allowing the mills to get out of repair and lay idle.

Sperry vs. Pond et al., 5 Ohio R. 242.

A party signed a note, upon condition that a certain mortgage was assigned to him as a security for so signing; plea showing a failure to assign the mortgage shows a good defence.

Capps vs. Smith et al., 3 Scam. R. 177.

Condition in a mortgage was, that mortgagee should pay off and discharge a prior mortgage on the same premises, for $1,200, by 15th Oct., 1843; mortgagee paid some $900, but failed to pay the whole by the day. Held that mortgage was void for breach.

Smith vs. Brown, 5 Gil. 312.
Andrews vs. Sullivan, 2 Gil. R. 327.
Williams vs. Edwards, 2 Sim. 78.

Benedict vs. Lynch, 1 John. Ch. R. 370, sustains conditions making the time of performance of the essence of the contract.

Kemp vs. Humphrey, 13 Ill. R. 573, is of the same character, making the time of payment material or a condition of the validity or avoidance of the contract.

"A reversion is where the residue of the estate always doth continue in him that made the particular estate, or where the particular estate was derived out of the estate which was granted," or "where the residue of the estate always continues in him who made the particular estate."

Smith on R. & P. Prop., 16 Law Lib. 185.
10 Coke R. 41, b. Partington's Case.
19 Viner's Abridg., Reversion, (B) Sec. 1.
1 Greenlf. Cruise, Tit. 17, Sec. 1 to 6.
1 Hilliard on Rl. Prop. 550.

"Where a gift is made of a *qualified* or *base fee*, no reversion remasin in the donor, but only a *posibility* of *reverter*."

Smith on R. &. P. Prop., 16 L. Lib. 186.
1 Greenlf. Cruise, Tit. 17, Reversions, Sec. 6.
1 Institutes 18, a.
10 Coke R. 41 b., Partington's Case.
1 Hilliard R. Prop. 550, Sec. 1.

"At common law, where a man conveyed a conditional fee, no reversion or actual estate remained in him, but the grantee took the entire estate, leaving only a *possibility* of *reverter* in the grantor, upon failure of condition." 1 Hilliard on R. Prop., 550, Sec. 4.

This *possibility* of *reverter*, or right of entry for breach, is not a reversion nor an estate in land; and it will not pass by assignment or by a conveyance of the premises held subject to condition.

Nicoll vs. New York & Erie R. R. Co., 2 Kernan R. 121.

A reversion being the balance or remainder of the fee left in the grantor after taking out the particular estate carved out of it, it follows that, where the whole has passed out of him, or where the whole still remains in him, there can be no reversion.

Cases, by way of illustration.

Where the owner in fee makes a lease for years at the common law, he has no reversion until the grantee enters upon the ground, that before entry the lessee does not complete his estate, and until the particular estate vests, the whole fee still remains in the lessor. Where the grant is

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by bargain and sale, the statute of uses executes the use into possession, and so the estate vests without common law livery of seisin.

1 Hilliard R. P. 551, Sec. 6.
Smith on R. & P. Prop., 16 L. Lib. 186.
1 Greenlf. Cruise, Tit. 17, Sec. 2, 7.
10 Coke R. 41, b. Partington's Case.
19 Vin. Abridg., Tit. Reversion, (D). Sec. 1.
Lutwitch vs. Milton, Croke Jac. 604.
5 Coke R. 254, Saffin's Case.

"Devise was of a *term for years to several successively for life*, after the death of all, the residue shall revert to the execution. There may be a *possibility* of *reverter* even where no remainder can be limited, as in case of a gift to A. and his heirs while such a tree stands."

19 Vin. Abridg. Tit. Reverter, (A), Sec. 4.
Eyres vs. Falkland, 1 Salk. R. 231.

"Lord Coke mentions a distinction between a *condition* that defeats an estate, but requires a re-entry ; and a *limitation* which determines the estate *ipso facto* without entry."

"Conditions render the estate *voidable by entry.* Limitations render it void without entry."

1 Greenlf. Cruise, Title 13, Cap. 2, Sect. 64. and Note.

He in remainder cannot enter for a condition broke by the particular estate.

5 Vin. Abridg., Tit. Conditions, (N. d.,) Sec. 3.

"But a devise for a term of years, or personal chattel to one for a day or an hour, is a devise of the whole term or interest; if the limitation over is void, and it appears at the same time that the whole was intend-to be disposed of from the executors."

"Where money, goods, or other personal chattels are devised to one, and the heirs of his body, or to one ; and if he die without heirs of his body, the remainder over this remainder is totally void, and the courts will not allow a bill by the remainder-man, to compel security to leave the money, &c., after the death of first devisee, but it shall go to his executors or administrators. For the first devise gives the absolute property of personal estate, as a like devise of real estate before the statute *de donis* give a fee, upon which no limitation could be made further ; and as the heirs are the representatives to take a real estate, so are the executors to take a personal estate; and this is not within the statute *de donis*, but reversions at common law."

"Chattels or money may be limited over after a life interest, but not after a gift of the absolute property."

"A remainder over of personal property may be created by will."

"A remainder may be limited after a life estate in personal property."
8 Bacon Abridg., Remainder, (A.) p. 300, 301, Ed. 1854.

If the reversion or remainder depend upon a particular estate upon condition, and entry is made for breach, the reversion or remainder is destroyed and falls with the particular estate. "He who enters for a condition, broken regularly, shall have the land in his first estate." "And, therefore, if tenant for life makes a feoffment, and enters for the condition broken, he shall be seized for life—the reversion as before."

"So if a man grants or devises for life upon conditions, remainder over, if it be a good condition, the entry for the condition broken will destroy the remainder."
3 Comyn. Dig. Tit. Condition, (O. 6,) p. 133.

"Yet if a remainder is not limited upon the non-performance of the thing to be done by the condition, it shall be taken as a condition, and not as a limitation."
3 Comyn Dig., Condition, (T.,) p. 139.

The statute of 32 Hen. 8, Cap. 34, allowed grantees or assignees of the reverson to take advantage of breach of condition; but this statute speaks only of lessees.
3 Comyn. Dig., Condition (O. 2,) p. 126.
1 Cruise, (Greenlfs.,) Title 13, Cap. 2, p. 43.

"If *lessor ejects his lessee* and dies, the possession descends to the heir of one joint estate, and yet the right remains still in the lessee; and if the lessor grants the reversion, the grant is void, for there is no reversion.
19 Viner, Title Reversion, (B.) Sect. 7.
Hob. 323, Elvis vs. Archibshop of York *et al.*

The reason is, that by ejecting the lessee, the whole estate has passed back into the lessor.

So the "issue, after the death of his father, *tenant by the curtesy* before entry, cites a *lease made by his father*, and that the reversion was in him, and grants reversion of said land to another for years after expiration of said first lease. This is a void lease, for he has no reversion at this time, the first lease being determined.

19 Viner Abridg., Tit. Reversion, (E.,) Sec. 5.
I Salk. R. 231, Eyres vs. Falkland.

A reversion, then, is the residue of the estate, created by the law, and which remains in the grantor, and a remainder differs only from a reversion in this, that when what would be a reversion, being undisposed of by the deed, becomes a remainder, when so disposed of by the deed.

The reversion is the remnant of the estate, disposed of by law, and it becomes a remainder when so disposed by the deed that creates the particular estate.

Where, then, the whole fee is disposed of, whether absolutely or conditionally, whether it be an allodial, absolute fee, or a base, conditional fee, still, there is neither reversion nor remainder left in the grantor.

This deed creates a base, conditional fee—but nevertheless a fee, and the whole estate—in Mrs. Wright in the use—while the legal title is conveyed in unconditional fee simple in the trustees.

There is, then, no sort of estate or interest left in E. Wright. There is simply *possibility* of a *reverter*—conditional. Until the condition is broken, and the grantor enters for breach, he has no saleable interest. Before breach and entry, he cannot convey that possibility, for it will not pass by the description of a *reversion*, nor pass by a deed of the land.

Such is the state of the legal title represented in this application as belonging to defendant.

I do not think the question of interest or estate arising from the simple fact of defendant having built upon the property, admits of debate or discussion.

It is not even evidence of an interest by license. The defendant cannot acquire an estate or interest in another's land by voluntarily making improvements by building upon his land.

The policy provides (condition 13, p. Record 18–19,) "When a policy is made and issued upon a survey and description of certain property, such survey and description *shall be taken and deemed to be a part* and *portion of such policy* and *warranty on the part of the assured.*"

His representation in the *application* was for insurance on "*his five story brick* store, front building occupied," &c.—(Page 74 Record.)

The policy required him to state "*what was his interest in the property* *insured.*" And he also avers in his declaration that "*he was the absolute owner of the building.*"—(Page 21, record.)

Again, "Property held in trust, or on sale, must be insured as such."

"If the interest in property to be insured be a *leasehold interest*, or *other interest not absolute*, it must *be so represented* and expressed in the policy, or otherwise the insurance shall be void."

"Notice of all previous insurances" on same property shall be given; and this Company shall be "*liable only* for *such rateable proportion* of the loss or damage."—(Page 12, 13, Record.)

In making proof of loss, they are to state "*what was their interest therein.*"—(Page 15.)

The policy is made in "*reference* to the *terms* and *conditions* hereunto annexed."—(Page 4.)

"If any person insuring any building or goods in this office, shall *make any misrepresentation* or *concealment*, the insurance shall be void." (Pages 11, 12.)

"All fraud or false swearing shall cause a forfeiture of all claims upon the insurers."—(Page 17.)

This policy expressly referred to an "*application* and *diagram* No. 29,991, on *file* in *this office*, to which this *insurance refers*, and which *is hereby* made a part of this policy."—(Page 2.)

These are the representations made of the ownership of the property insured, and such were the terms and conditions upon which the insurance was made.

The whole question, then, seems to be reduced to this: whether a party becomes the owner, absolutely, of a house which he may build upon another's land, without any agreement, verbal or written; and if so, whether he may offer proof of the building of the house as evidence of that ownership.

The very idea of such a title, and of such proof of title, upsets all our notions of realty and the statute of frauds.

The very broadest foundation ever laid for personalty rejected such a claim as this. For where one voluntarily mixed his goods with those of another, so as to destroy the identity of each, or bestowed his labor voluntarily, the goods and labor became the property of the other by the confusion. So that, instead of following his materials or money, he will lose both by the wrongful act of confusion.

I know of no principle of law, nor decision, which will allow one to follow his labor or materials, voluntarily bestowed in improvements of another's realty. If there be such a decision or principle laid down, it will be in defendant's power to produce it.

The law, or courts of equity, have gone to this extent, but no further. Where the party has made a *purchase* of the real estate, by parol agreement, and has taken possession and paid part of the purchase money, or made lasting and valuable improvements, there the claim to an interest has been sustained as a purchase—as a contract.

But I know of no case that has ever recognized an estate or interest of any nature or kind whatsoever, upon the ground that the claimant voluntarily made improvements upon another's land.

What kind and degree of estate or interest is it?

Whatever it may be in kind, or degree, or quantity of interest, must be capable of enforcement against the owner of the fee title and an exclusive enjoyment as against him.

To allow an exclusive occupation of the house upon the land, for life, for years, or for ever, would carry virtually the fee for that time, as the right, if it exist at all must exclude the occupation and enjoyment of the owner for the same period.

What degree of exclusivemes in the occupation and enjoyment, and for what period of time, will the facts proven in this case give this property to defendant, as against the trustees and the *cestui que use?* And if the period of enjoyment is one of limited duration, whose property will the house become, at the expiration of that period?

If this claim of title is not paramount to the title of the trustees and *cestui que trust*, it amounts to no title at all.

If it is paramount it must be capable of transfer by sale and conveyance.

But I think I need not labor further to establish a legal nonentity, which this claim seems to me to be, and is most apparent from the mere statement of the facts of the case.

If this be true then, that neither the terms of the trust, nor by the facts of the improvement any estate or interest is created; the misrepresentation of the title interest or estate is most clearly and palpably shown..

The policy required at least that he should fairly and fully disclose

"What was his interest in the property insured," and if the "property held in trust or on sale," or "if the interest in property to be insured be a leasehold interest, or other interest not absolute, it must be so represented and expressed in the policy, or otherwise the insurance shall be void."

If the assured "shall make any misrepresentation or concealment, the insurance shall be void."

Examining the representations actually made under these requirements of the policy, and finding no insurable or other interest in defendant, and the *misrepresentation* of the true title, and a *concealment* of his *want* of title or interest is most palpable and glaring.

Why did not defendant truly represent that the title of the premises was in trustees for Mrs. Wright, and that all the interest he had was from the fact of his having voluntarily built upon the fee simple estate of another.

I conclude this argument by simply referring to the fact that the plaintiff had no agent representing it in Chicago. Mr. Van Buren was not an agent of plaintiff; he made the application for this policy for defendant. Upon accepting the application and issuing this policy, it was sent to him to receive the premium for plaintiff. In the receipt of the premium he doubtless will be regarded as acting for plaintiff, but not in making the application.

A broker is the agent of the assured.

Angell on Ins., Sects. 467–8–9.
Acey vs. Finney, 7 Mees & Welsb. 151.

He is agent for assured in making the contract, and of the insurers in receiving the premium.

See Story on Agency, Sec. 31.

In Sexton's Case, 9 Barb. S. C. R. 191, it was held that the broker is the agent of the assured.

In cases of joint agency the Insurance Company is not liable.

Jellingham vs. N. Y. Ins. Co., 4 Sandf. R. 18.

It is impossible to sustain this judgment in any point of view we have presented and considered it, and I therefore submit it without further remark.

SCATES, For Appellant.