

No. 13657

Supreme Court of Illinois

Great Western Ins.Co.

vs.

Staaden

71641  7

Scott & Co., Printers, corner Clark and South Water Sts., Chicago.

SUPREME COURT
OF THE
STATE OF ILLINOIS.
THIRD GRAND DIVISION.

APRIL TERM, 1861.

GREAT WESTERN INSURANCE CO.

Plaintiff in Error,

vs.

NICHOLAS STAADEN,

Defendant in Error.

*Writ of Error to the
Cook Circuit Court.*

RECORD
PAGE.

ABSTRACT OF RECORD.

1 Nicholas Staaden, on the fourth day of November, A. D. 1858, by his
attorneys, sued out of said Court a writ of summons, directed to the
sheriff of Cook county. Summons in debt, claiming \$1,500, and \$200
2 damages. Return of service "by reading to James H. Rees, President
of the Company, and (on) H. W. Zimmerman, Secretary, by delivering
a copy thereof to him, November 4, 1858."

3 Declaration filed by plaintiff below, November 4th, 1858, in said
Court. Defendant summoned of a plea that they render to plaintiff
\$1,500. Whereupon, plaintiff, etc., complains: That on the 19th of
January, 1858, at, etc., (*venue aforesaid*), the said Nicholas Staaden, by
a certain deed poll or policy of insurance, made on the 19th January,
1858, at, etc., (*venue aforesaid*), by the Great Western Insurance
Company, signed by Jas. H. Rees, President, and H. W. Zimmerman,
Secretary, countersigned by Henry Bandt, Actuary of said Company,
and sealed with the common seal of said Company; which plaintiff brings
4 into court, and which said policy is in words and figures following, viz.:
(omitting caption, list of officers, and merely formal parts), By this
Policy, the Great Western Insurance Company, in consideration of \$30

paid, etc., do insure Nicholas Staaden against loss or damage by fire to the amount of \$1,500, on his frame building, occupied as a hardware store, tin shop and dwelling, situate on the west side of North Clark street, between Superior street and Chicago avenue, known as No. 219, city of Chicago, etc.

\$1,500 . . . six months . . . a 4 per ct. . . \$30.00

And said Company do hereby promise, etc., to make good to said assured, his executors, etc., all loss or damage, not exceeding in amount the sum insured, or the interest of the assured therein, as shall happen by fire to the property as above specified, from the 19th January, 1858, (at 12 at noon), to the full end and term of six months thence, etc., to expire July 19, 1858, at 12 at noon; such loss to be estimated according to the real and actual cash value of the property at the time the same shall happen, to be paid in sixty days after due notice and proof, etc., in conformity to the conditions annexed to this policy. Provided, always, etc., that this Company shall not be liable to make good any loss, etc., by means of invasion, insurrection, riot or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire.

5 And provided further, in case assured shall already have any other insurance against loss by fire on the property hereby insured, not notified, etc., this insurance to be of no effect. And if the insured shall hereafter make any other insurance on the same property, and shall not immediately give notice thereof to the Actuary, etc., this policy shall cease, etc. In case of such other insurance, etc., to be liable *pro rata*.

That in case said premises shall at any time, etc., be appropriated or used to or for the purpose of carrying on any trade, business, or vocation, or for the storing therein any of the articles, goods, etc., which would in any way increase the risk, except specifically provided for herein, or agreed by the Company in writing, etc., then, and thenceforth, these presents to cease and be of no effect.

6 That this insurance shall not apply to any books of account, deeds, evidences of debt, money or bullion; that this policy is made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties. Policy not to be valid till countersigned by Henry Bandt, Actuary.

Then follow the signatures of James H. Rees, President, H. W. Zimmerman, Secretary, and Henry Bandt, Actuary.

7, 8, 9,
10, 11

Then follows specifications of classes of hazards, upon pages 7, 8, 9, 10, 11, of the abstract.

CONDITIONS OF INSURANCE.

11 I. Applications for insurance on property, when in writing, must specify the construction and materials of the building to be insured, or

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

If any person insuring any building or goods in this office shall make any misrepresentation or concealment, or if, after the insurance is effected, either by original policy or the renewal thereof, the risk 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 buildings, or by the use or occupation of neighboring premises or otherwise, or if for any other cause the Company shall so elect, it shall be optional with the Company to terminate the insurance, after notice given to the assured, or to his representative, of their intention to do so, in which case the Company will refund a rateable proportion of the premium. Notice shall be given to the Company, in writing, by the assured, of such change or increase of risk, and the assent of the Company had thereto, before loss, or the policy shall be deemed void.

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

III. Property held in trust, or on commission, must be insured as such, otherwise the policy will not cover such property. Goods on storage must be separately and specifically insured. If the interest in property to be insured be 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.

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

In case of claim for loss or damage on a policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the assured in conformity with the conditions of this policy in like manner as if no assignment had been made, otherwise this policy shall be void and of no force or effect whatever, and all liability on the part of the Company shall cease.

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V. Notice of all other insurances, whether prior or subsequent to the date of this policy, must be given to the Company, and their consent thereto indorsed upon this instrument, or otherwise acknowledged in writing, otherwise this policy shall be of no effect. And in all cases of insurance, this Company shall be liable only for such rateable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.

VI. In case of fire or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property. And if they shall fail so to do, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect; and it is mutually understood that there can be no abandonment to the insurers of the subject insured; and also, that this Company or their agent have a right to examine and take account of the property saved, and that every facility be given to enable them to do so.

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. The keeping of gunpowder upon or in the premises insured, or lighting the same by camphene, spirit gas, or burning fluid, or keeping such articles for sale, will render this policy void, unless permission has been indorsed in writing on this policy, and the filling of lamps or receivers must be done in day time, or the permission will be void.

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

VIII. Jewels, jewelry, precious stones, watches, plate, metals, musical instruments, printed music, scientific instruments, paintings, plate glass in store fronts, prints, engravings, statuary, sculptures, curiosities, casts and models, are not included in any insurance, unless particularly specified in the policy.

IX. Persons sustaining loss or damage by fire, are forthwith to give notice thereof in writing to the Company, and as soon after as possible, they shall deliver to the Actuary as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands, and they shall accompany the same with their oath 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

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a copy of the written portion of the policy of each Company, what was the whole cash value of the subject insured, what was the 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, and whether or not the risk had been increased since insurance by any means whatever in the control of the insured or otherwise. They shall also produce a certificate under the hand and seal of a magistrate, or notary public, (most contiguous to the place of the fire and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers), 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 or damage on the subject insured, to the amount which such magistrate or notary public shall certify. A copy of the written portion of the policy shall be given in the affidavit of the claimant.

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When merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kind, separating the damaged from the undamaged goods and shall cause a list or inventory of the whole to be made, naming the quality and cost of each kind. The amount of damage shall then be ascertained by the examination and appraisal of each article by disinterested appraisers mutually agreed upon, one-half of the appraisers fees to be paid by the insurers, and shall, if required, submit to an examination under oath, by the agent or attorney of the Company, and answer all questions touching his, her, or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and whenever required in writing, the insured or person claiming, shall produce and exhibit his books of account and other vouchers, to this Company, at the office of this Company, in support of his claim, and permit extracts and copies thereof to be made; and shall also exhibit to any person named by the Company, and shall permit to be examined by them, any property damaged, on which any loss is claimed, or any property saved which was insured by this policy; and until such proofs, declarations and certificates are produced, and such appraisals and examination of the property permitted by the claimant, the loss shall not be payable.

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

X. In case of any loss on, or damage to the property insured it shall be optional with the Company to replace the articles lost or damaged,

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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 intentions so to do within thirty days after having received the preliminary proofs of loss required by the ninth article of these conditions. In case difference shall arise concerning the amount of any loss or damage by fire, the matter shall, at the written request of either party, be submitted to the judgment of arbitrators indifferently chosen, whose award in writing as to the amount of such loss or damage, shall be binding on the parties. Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved.

XI. Insurance once made may be continued for such further times as may be agreed on, the premium required therefor being paid, and a formal renewal receipt given for the same; and all insurances, original or renewal, shall be considered as made under the original representation in writing, which, in all cases, it shall be incumbent on the party insured to make, where the risk has been changed either within itself or by the surrounding or adjacent buildings; and if, at or before the time of renewing any policy of insurance on property where the risk has been increased by the erection of buildings, or by the use or occupation of the premises insured, or of the neighboring premises, the assured shall fail to give information thereof, said policy and renewal shall be void and of no effect.

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

XIII. Where property insured by the Company is damaged by removal from the building in which it is exposed to loss by fire, said damage shall be borne by the insured and insurers in such portion as the whole sum insured bears to the whole value of the property insured, of which proof, in due form, shall be made by the claimant.

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XIV. The Company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or deviation from the laws or regulations of police made to prevent accidents from fire, and a stove-pipe passing through the side or roof of the building, or any summer or out houses contiguous thereto, shall render the policy void.

XV. It is furthermore hereby expressly provided, that no suit or action of any kind against said Company for the recovery of any claim upon, under, or by virtue of this policy, shall be sustainable in any court of law or equity, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any such suit or action shall be commenced against said Company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and

deemed a conclusive evidence against the validity of the claim thereby so attempted to be enforced, and shall be a bar to any recovery hereafter.

19 Did make insurance, and caused himself to be insured from the 19th
of January, 1858, to July 19th, 1858, for \$1,500, on his frame build-
ing, occupied as a hardware store, tin-shop and dwelling, situate on the
20 west side of North Clark street, between Superior street and Chicago
Avenue, and known as No. 219, Chicago, etc., against all loss, etc., not
exceeding the sum mentioned in said policy, etc., by fire to said prop-
erty. Was owner in fee simple of said premises, etc. Same were
worth \$1,700. That the premises, etc., on the sixth of July, 1858,
were burned down, and totally destroyed by fire. That said fire did not
happen by invasion, insurrection, riot or civil commotion, or of any mili-
tary or usurped power; that thereby plaintiff sustained damage to the
amount so assured on the premises destroyed. That said premises were
not, when said policy was made, nor at any time since, insured in any
other Company, nor otherwise insured.

21 That at the time of said application, etc., said premises were duly
described, and not otherwise than they really were, nor so as to cause
said insurance to be effected upon a lower premium than it ought to have
been. That after the insurance was effected, the risk was not increased
by any means in plaintiff's knowledge or control. That said premises
were not occupied or used in any way so as to render the risk more haz-
ardous than when the policy was made. That there was no change or
increase of risk during the insurance, by erection of buildings, use or
occupation of neighboring premises, or otherwise. That during said
insurance, he always used his best endeavors for the safety and preserva-
tion of the property insured. That no gunpowder, camphene, spirit gas
or burning fluid was kept in or about said premises, for lighting same,
for sale, or any other purpose, during said term of insurance. That
said premises were not lighted by camphene, or spirit gas, or burning
fluid, during said insurance. That said buildings destroyed as aforesaid,
were provided with a good and substantial brick chimney. That said
fire did not occur in consequence of neglect, or deviation from the laws
or regulations of police to prevent accidents from fire. No stove-pipe
passing through the side or roof of said building, or through the side or
roof of any summer or outhouses contiguous thereto.

22 Plaintiff avers, that forthwith, after said loss, etc., he gave notice in
writing to said Company, and as soon as possible, viz., July 12, 1858,
delivered to the Actuary of said Company, as particular an account of
said loss and damage as the nature of the case would admit, signed with
his own hand, accompanied with his affidavit, declaring said account to
be true and just, and showing whether any and what other insurance
had been made on said property, giving a copy of the written portion
of said policy; what was the whole cash value of said property; what

was plaintiff's interest therein; in what general manner said insured building, and the several parts thereof, were occupied at the time of said loss; who were the occupants thereof; when and how the fire originated, so far as he knew or believed; whether or not the risk had been increased since insurance, by any means whatever, in plaintiff's control or otherwise.

23 Plaintiff avers, that after said fire, as soon as possible, to wit, July 6th, 1858, he furnished defendants with a certificate of Wm. H. Stickney, a magistrate then and there living, and doing business in Chicago, *very contiguous* to the place of said fire, and who was *also, then and there, a Notary Public, whose office was more contiguous to said fire than that of any other Notary*, and who was not concerned in said loss, or a creditor, or otherwise, and not related to the said insured, or to the sufferers from said fire; and that the said Magistrate and Notary Public, Wm. H. Stickney, certified by said certificate, that he was acquainted with the *character of the said plaintiff*; that he had made diligent inquiry into the facts set forth in said account and affidavit of the said plaintiff, and that he verily believed that *C. Staaden* had, by misfortune, without fraud or evil practice, *sustained loss by said fire* to the amount mentioned in the said affidavit.

Plaintiff further avers, that he handed in the said preliminary proofs heretofore, to wit, on the 12th day of July, 1858, at Chicago, which proofs were received without objection by said Company, and retained by them without calling on said plaintiff for other, or further proof, for a long space of time, viz., six weeks.

24 That the premium was duly paid at the time mentioned in said policy. That the policy at the time of loss was, and remained in full force, at the county aforesaid, whereby, and according to the tenor and effect of said policy, the said defendants then and there became liable to pay said plaintiff said sum of fifteen hundred dollars, whereby an action hath accrued, etc.

25 The defendants pleaded the general issue, upon which plaintiff joined in issue.

26 And also three special pleas, to two of which, plaintiff below filed
27 replications traversing the same, and to the third, a demurrer; but the defendants, before the trial, withdrew their special pleas, and no point thereon is made in this case.

43 Jury trial.

44 Verdict for plaintiff. \$1,500 debt, and \$145.50 damages. Motion
45 for a new trial, overruled by the court. Judgment for plaintiff, \$1,500 debt, and \$145.50 damages; in all, \$1,645.50 debt and damages, and costs.

47 Clerk's certificate, and seal of court.

ERRORS ASSIGNED.

That the court below erred in rendering judgment upon said declaration, and record, against Plaintiff in Error, and in favor of Defendant in Error.

ARTHUR W. WINDETT,

Attorney for Plaintiff in Error.

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Great Western Ins, Co

vs

Nicholas Staaden

Abstract

Filed April 29-1866

G. Gilman

Clerk

Referred

ERRORS RECALLED

This document is a record of the proceedings of the court in the case of Nicholas Staaden vs Great Western Insurance Co. It is a copy of the original record and is not a transcript of the proceedings.

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

To the Hon. Judges of said Court:

Your petitioner Nicholas Staden respectfully shews unto your Honors that in the suit of the Great Western Insurance Company vs. this petitioner decided at the last term of this Honorable Court, the reversal of the judgment of the Court below was based upon a supposed defect in the declaration in describing the certificate of proofs of petitioner, viz. as made of C. Staden instead of Nicholas Staden, the language of the opinion being as follows: "There is however an objection which must reverse this judgment the suit is brought by Nicholas Staden, and the certificate described in the declaration was to a different person, to one C. Staden, thus showing affirmatively that it was not the certificate called for in the policy. The want of a seal to the certificate, we are inclined to think would be cured by the verdict. There is no averment in the declaration that C. Staden and the plaintiff Nicholas Staden are one and the same person. The judgment is reversed and the cause remanded with leave to the plaintiff below to amend his declaration."

Your petitioner further shews unto your Honors that the defect referred to in said opinion never existed and does not now exist in the original declaration on file in the Circuit Court of Cook County in said case; and furthermore that in said declaration the word "said" immediately preceded the name "Staden" in that connection (referring of course to the plaintiff in the suit, there being no other Staden mentioned in the declaration) without the letter "C" appearing at all.

Your petitioner further shews unto your Honor, that, if the record in the Supreme Court read "G. Hadden and is not preceded by the word "sai", the clerk of the Circuit Court of Cook County committed two errors in copying the original declaration, which errors will appear if a writ of certiorari issue to the Court below to certify a new and correct copy of said original declaration.

Your petitioner further represents unto your Honor, that he has caused to be attached to this petition a copy of the original declaration certified to by the clerk and judge of the Circuit Court of Cook County, which he prays may be considered in connection with this petition.

Your petitioner further shews unto your Honor, that he was poor and unable to employ counsel to attend at the last term of the Supreme Court at Law that Messrs. Monroe & Spencer at the request of this petitioner and without pay attended to said suit sufficiently to avoid the consequences of non-judgment in error, but no further. On which grounds your petitioner prays - that a rehearing may be granted for the purpose of remedying the errors in question by suggesting a diminution of the record in question and the issuing of a writ of certiorari in the premises - and for such other relief as the law admits.

Nicholas Stanton

Monroe & Spencer
Attys. for petitioner.

State of Illinois
Cook County ss.

Nicholas Stanton being duly sworn deposes and says that he is the petitioner in the foregoing petition, that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Nicholas Stanton

Subscribed and sworn to before
me March 19th 1862.

Wm. Church
circuit court, cook co. Ill.



State of Illinois }
Cook County }

Cook County Circuit Court
Of the No. Term A.D. 1858

The Great Western Insurance Company, a body
Corporate under and by virtue of the acts passed
by the General Assembly of the State of Illinois
were summoned to answer unto Nicholas Stauden
of a plea that they render unto him the sum of
Fifteen hundred Dollars, which to him they owe
and from him they unjustly detain — and
whereupon the said Nicholas Stauden by
Wm. W. Spencer and Spencer his Attorneys complains
that whereas heretofore to-wit, on the nineteenth
day of January in the year of Our Lord one
thousand Eight hundred and fifty eight
at Chicago in the State of Illinois, to-wit, at
Cook County aforesaid, the said Nicholas
Stauden by a certain deed poll or policy of
Insurance made on the Nineteenth day of January
in the year of our Lord one thousand Eight
hundred and fifty Eight, at Chicago to-wit, at
Cook County aforesaid, by the said Great Western
Insurance Company and signed by James W. W. W.
President and W. W. Zimmerman Secretary
and counter-signed by Wm. W. Spencer, Attorney of
said Company and sealed with the Comm. Seal
of said Company, which the said plaintiff
here brings into Court and which said

is in the words and figures following to wit

The Great Western Insurance Company hereby consent that the interest of.....in the within Policy be assigned to.....
CHICAGO,.....185.....
.....Actuary.

For value received,.....hereby transfer, assign, and set over unto.....and.....assigns, all.....title and interest in this Policy, and all advantage to be derived therefrom. WITNESS.....hand.....and seal.....this.....day of.....
Sealed and delivered in presence of.....



The Great Western Insurance Company hereby consent that the interest of.....in the within Policy be assigned to.....
CHICAGO,.....185.....
.....Actuary.

For value received,.....hereby transfer, assign, and set over unto.....and.....assigns, all.....title and interest in this Policy, and all advantages to be derived therefrom. WITNESS.....hand.....and seal.....this.....day of.....
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.....Actuary.

For value received,.....hereby transfer, assign, and set over unto.....and.....assigns, all.....title and interest in this Policy, and all advantages to be derived therefrom. WITNESS.....hand.....and seal.....this.....day of.....
Sealed and delivered in presence of.....



The Great Western Insurance Company hereby consent that the interest.....in the within Policy be assigned to.....
CHICAGO,.....185.....
.....Actuary.

ASSIGNMENT OF MORTGAGE.

Know all men by these Presents, that.....in the within Policy of Insurance named, for and in consideration of the sum of *One Dollar*, to.....in hand paid, by.....the receipt whereof is hereby acknowledged, ha.... assigned, transferred, and set over, and by these presents do.... assign, transfer, and set over unto the said..... assigns, the within Policy of Insurance, and all sums of money, interest, benefit, and advantage whatsoever, now due or hereafter to arise, or to be had or made by virtue thereof: TO HAVE AND TO HOLD unto the said..... assigns; upon condition, nevertheless, that if..... heirs, executors, or administrators, do well and truly pay unto the said..... assigns, the just and full sum of..... according to the condition of a certain bond or obligation bearing date the..... day of..... one thousand eight hundred and..... and made and executed by..... to the said..... with all interest due or to become due.

IN WITNESS WHEREOF..... have hereunto subscribed..... name..... this..... day of..... in the year of our Lord one thousand eight hundred and fifty.....
WITNESS,.....

GREAT WESTERN INSURANCE COMPANY,

OF THE CITY OF CHICAGO.

AUTHORIZED CAPITAL, \$500,000.

CHARTER PERPETUAL,

CLASSES OF HAZARDS.

NOT HAZARDOUS.

Staple and Foreign DRY GOODS in packages, and Staple Domestic Dry Goods in stores where no hazardous merchandise is kept, and HOUSEHOLD FURNITURE in Dwelling-houses, may be insured at the rate of the building in which they are contained.

HAZARDOUS.

The following Trades and Occupations, Goods, Wares and Merchandise, are deemed HAZARDOUS, and subject the building and all its contents to an additional charge of 10 cents per \$100. They are: China, earthen or glass-ware, in boxes, crates or casks, fire-crackers in packages, flax in bales, grocers' stocks, hat-finishing, (without the use of fire-heat, except for heating irons,) hay pressed in bundles, hemp in bales, Manila grass in bales, oil, porter-houses, rags in packages, sail-making, segars, segar manufactories, Sisal grass in bales, spiritous liquors, sugars, sulphur, tallow, taverns, threshed grain, victualing shops, wine dealers' stocks, 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. They are: Beef and pork in barrels, boots and shoes, brass, copper, iron, lead, tin, zinc and other metals in bars, pigs, rods or sheets, brushes, (stocks of,) coffee, cotton batting and wadding, dry-goods, (general stock of,) flour, furs, and peltries in packages, hardware and cutlery, hides and leather, indigo, looking-glasses in boxes, paints ground in oil, paper hangings, paper in reams, potash, rice, spices, tailors' stocks and ready made clothing, teas, 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 charge of 20 cents per \$100. They are: Alcohol, apothecaries' stocks, (those who make up prescriptions only,) band-box and paper-box manufactories, basket-bleaching or making, basket-sellers' stocks, bottling cellars, brass turning and working, brush-makers' stocks, cabinet-makers' stocks, carvers' shops, china, or glass or earthenware, or looking-glasses unpacked, and buildings in which the same are packed or unpacked, chocolate manufactories, colormen's stocks, copperplate printing, cotton in bales, drugs, importers (stocks of) without inflammable acids or phosphorus, essential oils, fur or wool hat finishing, (with use of fire-heat to steam and block the bodies,) hat bleaching, gutta-percha and gutta-percha goods, gun-makers or smiths' shops, India rubber and India rubber goods, lithographing, morocco manufactories, musical instrument-makers stocks, oakum in bales, printers' stocks, perfumers' stocks, pitch, plumbing and pewatering establishments, pocket-book manufactories, printing of newspapers or engravings, rag and junk-shops, ship chandleries, spirits of turpentine, tar, tin or sheet iron or copper-workers' shops and stocks, turners' shops, turpentine, umbrella manufactories, upholstery manufactories, varnish, wooden-ware sellers' stocks.

Ships in Port or their cargoes, and ships building and repairing, may be insured against Fire.

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: Booksellers' stocks, cabinet-ware, confectioners' stocks, daguerreotypists' stock and fixtures, furs unpacked, jewelers' stocks, lamp-sellers' stocks, liquors in glass unpacked, milliners' stocks, musical instruments and printed music, optical and mathematical instrument-makers' stocks, pictures and prints, precious stones, pocket-book makers' stocks, silver and plated ware, silver-smiths' stocks, stationers' stocks, straw goods, toy shop keepers' stocks, watchmakers' stocks and tools, window and plate-glass unpacked, wine in glass unpacked.

MEMORANDUM OF SPECIAL RATES.

Acids, (nitric, sulphuric, muriatic, and other acids, causing ignition,) bakeries, bark mills, blacksmiths' shops, bleaching works, blind-makers' shops, block and pump manufactories, book-binders, boat-building, brass foundries, breweries, brimstone works, brush manufactories, cabinet-makers' shops, candle manufactories, carpenters' shops, carpet manufactories, carving of wood, camphene on sale, copper-smiths' shops with forges, coffee roasting, coffee and spice mills, chair-makers' shops, chemical laboratories, coach manufactories, comb manufactories, confectionery manufactories, cooper's shops, corn kilns, cotton mills, cotton unpacked, cotton presses, cotton brokers with samples, distilleries, dyers' works, druggists' stocks, (wholesale,) drug and spice mills, either, fur dressers' establishments, fireworks and firework manufactories, flax mills, flax unpacked, floor cloth manufactories, fringe manufactories, fulling mills, gas manufactories, gas on sale, grate manufactories, grist or flouring mills, gun manufactories, hat manufactories, hemp unpacked, hay unpacked, houses building or repairing, India rubber or gutta-percha manufactories, ink manufactories, iron foundries, ivory-black and lamp-black manufactories, lamp manufactories, lime yards and sheds, lime unslacked, livery stables, lumber yards, looking-glass and picture frame manufactories, machine shops, mahogany yards, malt houses, match factories, matches on sale, musical instrument manufactories, metal mills, oil boiling houses, oil cloth manufactories, oil mills and manufactories, plated ware manufactories, packing buildings and yards, paper mills, paper hanging manufactories, perfumery manufactories, planing, grooving or moulding mill, powder mills, printing of books and job printing, phosphorus, rectifying of liquors, rope and cordage manufactories, stove manufactories, sash manufactories, saw mills, soap manufactories, silversmiths' manufactories, snuff mills and manufactories, spirit gas manufactories, stables, (private,) stove yards, steamboats, steam engines in use, sugar refineries, tobacco manufactories, type and stereotype foundries, tallow melting establishments and chandleries, spirit gas on sale, tanneries, tar boiling houses, theatres or other places of public exhibition, timber yards, turpentine distilleries, turning of wood, varnish manufactories, woolen mills, wheelrights' shops, and generally all mills and manufacturing establishments, and all trades and occupations requiring the use of fire-heat, not before enumerated.

CONDITIONS OF INSURANCE.

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

If any person insuring any building or goods in this office, shall make any misrepresentation or concealment, or if, after insurance is effected, either by the original Policy, or by the renewal thereof, the risk be increased by any means whatever within the control of the assured, or if such buildings 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 buildings, or by the use or occupation of neighboring premises, or otherwise, or if for any other cause the Company shall so elect, it shall be optional with the Company to terminate the insurance, after notice given to the assured, or to his representative, of their intention to do so; in which case the Company will refund a ratable proportion of the premium.—Notice shall be given to the Company in writing by the assured, of such change or increase of risk, and the assent of the Company had thereto, before loss, or the Policy shall be deemed void.

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

III. Property held in trust, or on commission, must be insured as such, otherwise the Policy will not cover such property. 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.

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

In case of claim for loss or damage on a Policy assigned, where there is no actual sale or transfer of the property insured, proofs of loss shall be made by the assured in conformity with the conditions of this Policy, in like manner as if no assignment had been made; otherwise this Policy shall be void and of no force or effect whatever, and all liability on the part of the Company shall cease.

V. Notice of all other insurances, whether prior or subsequent to the date of this Policy, must be given to the Company, and their consent thereto endorsed upon this instrument, or otherwise acknowledged in writing, otherwise this Policy shall be of no effect. And in all cases of insurance, this Company shall be liable only for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different Policies.

VI. In case of fire or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured, to use their best endeavors for saving and preserving the property. And if they shall fail so to do, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect. And it is mutually understood that there can be no abandonment to the insurers of the subject insured; and also that this Company, or their Agent, have a right to examine and take account of the property saved, and that every facility be given to enable them to do so.

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, gun powder, 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. The keeping of gun powder upon or in the premises insured, or lighting the same by camphene, spirit gas, or burning fluid, or keeping such articles for sale, will render this Policy void, unless permission has been endorsed in writing on this Policy, and the filling of lamps, or receivers, must be done in day time, or the permission will be void.

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

VIII. Jewels, jewelry, precious stones, watches, plate, metals, musical instruments, printed music, scientific instruments, paintings, plate glass in store fronts, prints, engravings, statuary, sculptures, curiosities, casts and models, are not included in any insurance, unless particularly specified in the Policy.

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

their interest therein; in what general manner [as to trade, manufactory, merchandise, or otherwise] the building insured or containing the subject insured, and the several parts thereof were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe, and whether or not the risk had been increased since insurance by any means whatever, in the control of the insured or otherwise. They shall also produce a certificate under the hand and seal of a magistrate or notary public, (most contiguous to the place of the fire, and not concerned in the loss, as a creditor or otherwise, or related to the insured or sufferers,) 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 or damage on the subject insured, to the amount which such magistrate or notary public shall certify. A copy of the written portion of the Policy shall be given in the affidavit of the claimant.

When merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, asserting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods, and shall cause a list or inventory of the whole to be made, naming the quality and cost of each kind. The amount of damage shall then be ascertained by the examination and appraisal of each article by disinterested appraisers, mutually agreed upon, one-half of the appraisers' fees to be paid by the insurers, and shall, if required, submit to an examination under oath, by the Agent or Attorney of the Company, and answer all questions touching his, her or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and whenever required in writing, the insured, or person claiming, shall produce and exhibit his books of account and other vouchers, to this Company, at the office of this Company, in support of his claim, and permit extracts and copies thereof to be made; and shall also exhibit to any person named by the Company, and shall permit to be examined by them any property damaged on which any loss is claimed, or any property saved which was insured by this Policy.—And until such proofs, declarations, and certificates are produced, and such appraisals and examination of property permitted by the claimant, the loss shall not be payable.

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

X. In case of any loss on, or damage to the property insured, it shall be optional with the Company to replace the articles lost or damaged, with others of the same kind and quality, and to rebuild, or to repair the building or buildings, within a reasonable time, giving notice of their intentions so to do within thirty days after having received the preliminary proof of loss required by the ninth article of these conditions. In case difference shall arise concerning the amount of any loss or damage by fire, the matter shall, at the written request of either party, be submitted to the judgment of arbitrators, by fire, the matter shall, at the award in writing, as to the amount of such loss or damage, shall be arbitrators indifferently chosen, whose losses shall be made in sixty days after the loss shall have been ascertained and proved. Payment of

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

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

XIII. Where property insured by this Company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and insurers, in such portion as the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

XIV. The Company will not be answerable for any loss arising from the use of fires in buildings unprovided with a good and substantial stone or brick chimney, or in consequence of neglect or deviation from the laws or regulations of police, made to prevent accidents from fire, and a stove pipe passing through the side or roof of the building, or of any summer or out houses, contiguous thereto, shall render the Policy void.

XV. It is furthermore hereby expressly provided, that no suit or action shall be sustainable in any Court of Law or Equity, unless such suit or action shall be commenced within the term of twelve months next after any loss or damage shall occur; and in case any such suit or action shall be commenced against said Company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced, and shall be a bar to any recovery hereafter.

In seal

POLICY OF INSURANCE.

No. ~~1000~~

THE
Great Western Insurance Co.
OF CHICAGO, ILL.

OFFICE, *111 E. Water Street*

W. B. Plummer

~~\$ 500.00~~ Premiums, \$ 15.00
Policy, \$ 1.00
\$ 16.00

AUTHORIZED CAPITAL, \$500,000.

DIRECTORS.

JAMES H. REES, HART L. STEWART, CHARLES V. DYER,
THOS. LONERGAN, SOLOMON M. WILLSON, O. R. W. LULL,
SAM'L H. KERFOOT, N. P. IGLEHART, C. G. E. PRUSSING.

JAMES H. REES..... President.
HART L. STEWART..... Vice President.
H. A. TUCKER..... Treasurer.
HENRY BANDT..... Actuary.
HENRY W. ZIMMERMAN..... Secretary.

Remised, *July 25 1859*
Expires, *July 25 1859*

did make insurance, and caused himself to be insured
 at and from the Nineteenth day of January in the year
 of our Lord One thousand eight hundred and fifty
 Eight to the nineteenth day of July in the year of
 Our Lord One thousand eight hundred and
 fifty eight, for the sum of Fifty hundred dollars
 on his frame building, occupied as a hardware
 store. This shop and dwelling, situate on the
 West-side of North LaSalle Street, between
 Superior Street and Chicago Avenue and
 known as number 219 being in the County of Cook
 City of Chicago State of Illinois, against all
 loss and damage not exceeding the sum insured
 in said Policy mentioned, as should happen by
 fire to the said property. And the said plaintiff
 further says, that the said plaintiff at the
 time of the making of said Policy and from
 thence till the hereinafter mentioned loss and
 damage, was the owner in fee simple of the
 premises in said Policy mentioned, and that
 he intended to be insured, and that the value
 was of the value of Seventeen hundred dollars.
 And the said plaintiff
 further avers that the said premises in the said Policy
 or policy mentioned afterwards, to-wit, on the
 sixth day of July in the year of our Lord one
 thousand eight hundred and fifty eight, were
 burned down consumed and totally destroyed
 by fire and that the said fire did not ha

By means of insurrection, riot or civil commotion
or of any military or usurped power where
said plaintiff then and there sustained damages
and and loss to a large amount to wit, the sum
of money so insured on the said premises is burnt
down and destroyed, and the said plaintiff
further avers that the said premises in the said deed
or policy mentioned at the time of the making of
the said deed or policy were not nor at any time
since have they been insured in any other company
nor otherwise insured. — And the
plaintiff further avers, that at the time of the ap-
plication for the said insurance the said premises in the
said policy mentioned were duly described and not
otherwise than they really were, nor so as to cause the
said insurance to be effected upon a higher premium
than it ought to have been. — And the said plaintiff
further avers that after the said insurance was effected
on the said property, the risk was not ^{increased} ~~increased~~ by any
means whatever within the knowledge or control
of the said plaintiff, and that the said premises
were not occupied or used in any way so as to render
the risk more hazardous, that at the time of the making
of the said Policy, and that there was no change or in-
crease of risk during the said insurance, by the burning
of buildings or by the use or occupation of neighboring
premises, or otherwise. — And the said plaintiff
further avers that during the said insurance

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said policy effected, he has always used his
endeavors for the safety and preservation of the
said property insured, and that no gunpowder or
Camphene or spirit gas, or burning fluid, or any
kept in or about the said premises either for lighting
the same or for sale or for any other purpose during
the said term of insurance, and that the said
premises were not lighted by camphene or spirit gas
or burning fluid during the said insurance, and
the said plaintiff avers that the said building
destroyed as aforesaid, was provided with a good
and substantial Brick Chimney, and that the
fire did not occur in consequence of neglect or
derivation from the laws or regulations of parliament
made to prevent accidents from fire, and that
there was no stove pipe passing through the side or
roof of the said building so destroyed as aforesaid
or through the side or roof of any furnace or
Contiguous thereto

And the said plaintiff
avers, that he did forthwith after the said fire and
damage, give notice thereof to the said defendant
in writing, and as soon after as possible he paid
on the 11th day of July in the year of our said
One thousand eight hundred and fifty eight, and
delivered to the Actuary of the said Company, a par-
ticular account of the said loss and
as the nature of the case would admit signed
his own hand and accompanied with his aff

declaring the said account to be true and showing whether any and what other Insurance had been made on the said property, giving a Copy of the written portion of the said policy, what was the whole Cash value of the said property, what was the interest of the said plaintiff therein, in what general manner the said building insured and the several parts thereof were occupied at the time of the said loss, and who were the occupants thereof, when and how the same originated so far as he knew or believed and or not the risk had been increased since the said Insurance by any means whatever in the Control of the said plaintiff or otherwise —

And the said plaintiff further avers, that he also as soon as possible after the said fire to-wit: on the sixth day of ~~the~~ ~~year~~ in the year of our Lord One thousand Eight hundred and fifty Eight furnished said defendants with a Certificate of M^r J. C. Sticks, a magistrate then and there living and doing business in Chicago very contiguous to the place of said fire, and who was at that time and there a Notary public, whose office was at that time known to said fire than that of any other notary and who was not concerned in the said loss as a creditor or otherwise, and not related to the said insured or to the sufferers from said fire and that the said Deputized and Notary Public

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Mr W. Stickney certified by the said Certificate that he was acquainted with the character of the said plaintiff that he has made diligent inquiry into the facts set forth in the said account and affidavit of the said plaintiff and that he well believed that he the said ~~Stacy~~ had by misfortune, without fraud or willful neglect, suffered loss by the said fire to the amount mentioned in the said affidavit.

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And the said plaintiff further avers that he handed in the said preliminary proof heretofore to-wit, on the twelfth day of ~~June~~ in the year of our Lord one thousand ~~eight~~ hundred and fifty eight, at Chicago aforesaid which said preliminary proofs were received without objection by the said Company and retained by them without calling on the said plaintiff for other or further proofs for a long time to-wit, six weeks.

And the said plaintiff further avers that the premium or sum of money in the said policy mentioned was duly paid to and accepted by the said defendants at the time and place and in the manner and form in said policy as therein mentioned; and that the said policy at the time of said loss was and remained in full force to-wit, at Cook County aforesaid, which was according to the tenor and effect of said Policy the said Defendants then and there being

liable to pay to the said plaintiff the sum
of Fifteen hundred dollars, in said policy
whereby an action hath accrued to the said plai
ntiff to demand and have of and from the said
defendants the sum of money above demanded.

Nevertheless the said defendants
although often requested have not paid to the said
plaintiff the said sum of money above demanded
or any part thereof but so to do have hitherto
refused and still do refuse to the damage
said plaintiff to the value of two hundred
dollars and therefore he brings his suit as

Wm Spencer

Attys for plaintiff

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

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 declaration filed November 4th A. D. 1857 in a certain cause lately pending in said Court on the Common Law side thereof, wherein Nicholas Staaden was Plaintiff and

~~The Great Western Insurance Company~~ defendant, a copy of which declaration was last year sent up to the Supreme Court of Illinois in a record of said case.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 19th day of March A. D. 1862

Wm L Church
Clerk.

State of Illinois }
County of Cook } ss.

I, George Manierre, Judge of the Circuit Court of Cook County, hereby certify that I have carefully examined the original declaration of which the foregoing is a copy & find that in the description therein contained of the certificate of preliminary proofs of loss, the word "said," immediately precedes the word "Placem," without any "e," intervening; and that the "e," in the record on which the cause was heard in the Supreme Court, is not warranted by anything contained in the original narr. except the flourish with which the draftsman had written the letter "e," in the name "Gus

George Manierre
Judge of 7th Judicial
Circuit, Ill.

³³⁴
Supreme Court of Illinois
Grand Division
April Term 1862

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Great Western Insurance
Co.

Plaintiff in Error

vs.

Nicholas Staaden

Def. in Error

1862

Petition for Rehearing

Filed April 30. 1862

L. L. Leland

Clerk

13657