

No. 13596

Supreme Court of Illinois

Staaden.

vs.

Great Western Ins. Co.

71641  7

The Great Western Insurance Company,
Nicholas Stadden

To the Judge of the Supreme Court.

II

Why was the Judgment of the Court below reversed?

Because the certificate in the case was deficient - and did not meet the requirements of the Condition in the Policy.

The deficiencies of the Certificate were threefold.

1. Those relating to the Person giving the Certificate.
2. Those relating to the facts covered by the Certificate.
3. Third - least of all - the Panda taken given.

All these were essential and indispensable requisites to the Condition precedent. And that absence of either of these was fatal to the right of action, of recovery, and fatal to the Judgment - and clear the cause of Reversal -
There

II

There was no waiver of faults.
It is not expressly pleaded - None
ought to be implied - The intendants are
all appointed Storden, and in favor
of the judgment of this Court.
See argument of Judge Marshall
in Lawrence v. Col. Jm. L. 2 Peters

III

In spite of the Doctrine of Waiver, the
Court Reversed the Judgment.
By this they overruled the doctrine of Waiver.
For if the doctrine of Waiver is to govern,
it would be just as fatal to the
point as to Storden's name.
Because the defect as to Storden's name
was the sum of all the defects
the certificate proposed. By this
certificate was fatally defective
on that score, a fortiori, it was
defective on the other points.
If the defect as to Storden's name
shall reverse the judgment, a fortiori
the other defects must. By this
the sum of all defects is not waived,
the copy ones are not waived.
The judgment must stand reversed.

I submit to the Court, the argument
is irresistible - Let it prevail.
The party still has his right of trial,
amendment and jury, if
his claim be valid - and just.
But if this case shall go again
before a jury, it will be lost.

Respectfully submitted by

Arthur R. Winkler
counsel with P. W. & Co.

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Supreme Court.

The Great West. Ins. Co.

vs

Wm. H. Hester

Plffs. vs.

Filed May 12, 1842

E. L. Hester

MR

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Marcum 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 Second Monday, (being the Ninth day) of April in the year of our Lord one thousand eight hundred and Eight and of the Independence of the said United States the Eighty-fourth

Present, Honorable Geo. Marcum Judge of the 7th Judicial Circuit of the State of Illinois.

Carroll Havin States Attorney.

John Gray Sheriff of Cook County.

Attest, W. L. Church Clerk.

Be it remembered that heretofore, to wit, on the fourth day of November in the year of our Lord one thousand eight hundred and fifty eight Nicholas Staaden Plaintiff by Monroe & Spencer his attorneys sued out of the Court aforesaid and under the seal thereof the People's writ of summons, directed to the Sheriff of Cook County to execute & clothed in the words & figures following, to wit,

State of Illinois }
Cook County } ss.

The People of the State of Illinois,
to the Sheriff of said County—Greeting:

We command you that you summon The Great Western Insurance Company if it shall be found in your county, personally to be and appear before the Circuit Court of County, on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said County, on the third Monday of November

2.

Inst. to answer unto Nicholas Staaden of a plea, that he renders to the said Plaintiff Fifteen Hundred Dollars which it owes to and unjustly detains from him to the damage of the said Plaintiff as is said, in the sum of two hundred dollars.

And have you then and there this writ, with an endorsement hereon; in what manner you shall have executed the same,

Witness, William L. Church, Clerk of our said Court,



and the seal thereof, at Chicago aforesaid, this Second day of November A. D. 1858

W^m L. Church Clerk

And afterwards, to wit, on the fourth day of the month and year last aforesaid, said writ was returned into the Court aforesaid, by said Sheriff endorsed as follows,

to wit, Served by reading to James H. Rees President of the within named Insurance Company the 4th day of Nov. 1858 also on H. W. Zimmerman Secretary of the within named Insurance Company by delivering a copy hereof to him the 4th day of Nov. 1858. Fees - 2 summons 1.00 - 1 copy .50 2 miles, 10 - 1 return, 10 - \$1.70 John L. Wilson Sheriff
By John W. Dart Deputy

And afterwards, to wit, on the 4th day of November in the year last aforesaid, said Plaintiff by his said Attorneys filed in the Court aforesaid his certain declaration in the words and figures following, to wit,
State of Illinois }
Cook County } 02,
Cook County }
Cook County Circuit Court
of the Nov. Term A. D. 1858
The Great Western Insurance Company

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 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 Maaden 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 Maaden by Monroe & 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 Maaden 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 H. Rees President and H. W. Zimmerman Secretary and counter-signed by Henry Bandt Actuary of said Company and sealed with the common seal of said Company which the said plaintiff now here brings into Court, and which said policy is in the words and figures following to wit,
 \$ 1500⁰⁰

No. 174

The Great Western Insurance Company
 Officers - President, James H. Rees. Vice President
 Hart L. Stewart. Actuary, Henry Bandt. Secretary,
 Henry W. Zimmerman. Treasurer, H. A. Tucker.

By this Policy of Insurance The Great Western Insurance

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Company, in consideration of Thirty ⁰⁰/₁₀₀ Dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure Nicholas Staaden against loss or damage by fire to the amount of Fifteen hundred Dollars on his frame building occupied as a hard-ware store, Tin shop and dwelling situated on the West side of North Clark Street between Superior St. and Chicago Avenue, and known as number 219, City of Chicago Illinois.

\$1500 ⁰⁰/₁₀₀

Six months

@ 4%

\$30 ⁰⁰/₁₀₀

And the said Company do hereby promise and agree to make good unto the said assured, his executors, administrators and assigns, all loss or damage, not exceeding in amount the sum insured, nor exceeding the interest of the assured therein, as shall happen by Fire to the property as above specified, from the nineteenth day of January one thousand eight hundred and fifty eight (at 12 o'clock at noon) unto the ^{end} full and term of six months thence next ensuing, which term will expire on the nineteenth day of July 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 the same 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 Company shall not be liable to make good any loss or damage by fire, which may happen or take place by means of invasion, insurrection, riot or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire

5- And Provided Further, that in case the assured shall already have any other insurance against loss by fire, on the property hereby insured, and not notified to this Company, and mentioned ⁱⁿ ~~on~~ 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 immediately give notice thereof to the Actuary, and have the same endorsed on this instrument, or otherwise acknowledged by him in writing, this Policy shall cease, and be of no effect. And in case of any other insurance upon property hereby insured, whether prior or subsequent to the date of this Policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this Policy any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is Agreed and Declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time after the making of, and during the time this Policy would otherwise continue in force, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business or vocation, or for the purpose of storing therein any of the articles, goods or merchandise, which would in any way increase the risk, except herein specially provided for, or hereafter agreed to by this Company in writing, to be added to or endorsed upon this Policy, then and from thenceforth these presents shall cease, and be of no force or effect. And it is Moreover Agreed and Declared, that this insurance is

not intended to apply to, or cover any books of account, written securities, deeds, or other evidences of title ~~of~~ 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 hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto.

This Policy shall not be valid until countersigned by Henry Bandt, Actuary of the said Company.

In Witness Whereof, The Great Western Insurance Company have caused these presents to be sealed with their seal, and signed by their President and Secretary, and countersigned by the Actuary, in the City of Chicago, Illinois, this nineteenth day of January 1858.

Attested
 James H. Pees President
 H. W. Zimmerman Secretary
 Henry Bandt Actuary

The 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

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merchandise is kept, and Household Furniture in Dwelling Houses may be insured at the rate of the building in which they are contained.

Harardous,

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, grower's stocks, hat finishing, (without the use of fire-heat, except for heating irons,) hay pressed in bundles, hemp in bales, Manilla grass in bales, oil, porter-houses, rags in packages, soil-making, segars, segar-manufactories, Sisal grass in bales, spiritous liquors, sugars, sulphur, tallow, taverns, threshed grain, victualing shops, wine dealer's 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, tailor's stocks and ready made clothing, teas, wine in glass in packages, wine in casks, window or plate glass in boxes.

Eocha Hazardous.

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The following Trades, Occupations, Goods, Wares and Merchandise are deemed Eocha 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 earthen-ware, 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 pewtering establishments, pocket book manufactories, printing of newspapers or engravings, rag and junk shops, ship chandeliers, 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.

The following are considered Eocha Hazardous on account of their great liability to damage, and are charged.

20 cents per \$100 in addition, but do not increase the rate of the building. They are: Booksellers' stocks, cabinet ware confectioners' stocks, daguerreotypists' stock and fixtures, furs unpacked, jewelers' stock, 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, watch-makers' 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, black smiths' shops, bleaching works, blind makers' shops, block and pump manufactories, book binderies, boat building, brass foundries, breweries, brimstone works, bush manufactories, cabinet makers' shops, candle manufactories, carpenters' shops, carpet manufactories, carving of wood, camphene on sale, cooper smiths' shops with forges, coffee roasting, coffee and spice mills, chair makers' shops, chemical laboratories, coach manufactories, comb manufactories, confectionery manufactories, coopers' shops, corn kilns cotton mills, cotton unpacked, cotton presses, cotton brokers with samples, distilleries, dyers' works, druggists' stocks. (wholesale) drug and spice mills, ether, fur dressers' establishments, fire-works, and fire work manufactories.

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glass mills, glass unpacked, floor cloth manufactories, fringe
 manufactories, fulling mills, gas manufactories, gas on sale,
 grock manufactories, grist or flouring mills, gum manufactories,
 hat manufactories, hemp unpacked, hay unpacked, houses building
 or repairing, India rubber, or gutta serena manufactories, ink man-
 ufactories, iron foundries, ivory black and lamp black manufac-
 tories, lamp manufactories, lime yards and sheds, lime un-
 slacked, livery stables, lumber yards, looking-glass and pic-
 ture frame manufactories, machine shops, mahogany yards,
 malt houses, match factories, matches on sale, musical instru-
 ment 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 man-
 ufactories, planing, grooving or moulding mill, powder
 mills, printing of books and job printing, phosphores, rectify-
 ing of liquors, rope and cordage manufactories, stove manu-
 factories, sack manufactories, saw mills, soap manufactories,
 silversmiths' manufactories, snuff mills and manufactories,
 spirit-gas manufactories, stables, (private) stove yards, steam
 boats, steam engines in use, sugar refineries, tobacco manu-
 factories, type and stereotype foundries, tallow melting es-
 tablishments, and chandleries, spirit gas on sale, tanneries,
 tar boiling houses, theatres or other places of public exhibition,
 timber yards, turpentine distilleries, burning of wood,
 varnish manufactories, woolen mills, wheelrights' shops,
 and generally all mills and manufacturing estab-
 lishments, and all trades and occupations requiring

the use of fire heat, not before enumerated,

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

Conditions of Insurance.

1. 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 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 termin

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ate the insurance, after notice give 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.

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

111. 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 thereforth 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

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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 Agents, 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

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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 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

16 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 practices, 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, assorting and arranging the various articles according to their kinds, separating the damaged from the undamaged goods, and shall cause a list or inventory of the whole to be made, naming the 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

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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 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 impartially 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 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} ~~of~~ 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.

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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 dereliction 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 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 as conclusive evidence against the validity of the claim thereby so attempted to be enforced, and shall be a bar to any recovery hereafter. ~~He~~ ~~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 fifteen hundred dollars on his frame building occupied as a hard-ware store, tin shop and dwelling, situate on the West side of North

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Clark 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 said amount 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 thereby intended to be insured and that the same was of the value of seventeen hundred dollars.

And the said Plaintiff further avers that the said premises in the said Deed or Policy mentioned aforesaid, 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 happen by means of invasion, insurrection, riot or civil commotion, or of any military or usurped power whereby the said Plaintiff then and there sustained damage and loss to a large amount to wit, the sum of money so assured on the said premises so 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 said Plaintiff further avers, that at the time of the application 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

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the said insurance to be effected upon a lower 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 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 than at the time of the making of the said Policy, and that there was no change or increase of risk during the said Insurance, by the erection of buildings or by the use or occupation of neighboring premises or otherwise.

And the said Plaintiff further avers that during the said Insurance by the said Policy effected, he has always used his best endeavor for the safety and preservation of the said property insured, and that no gun-powder, or camphene, or spirit-gas, or burning fluid was 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 buildings destroyed as aforesaid was provided with a good and substantial brick chimney, and that the said fire did not occur in consequence of neglect or deviation from the laws or regulations of police 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 summer or out houses

contiguous thereto..

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And the said Plaintiff further avers that he did forthwith after the said loss and damage give notice thereof to the said Defendants in writing, and as soon after as possible, to wit, on the twelfth day of July in the year of our Lord one thousand eight hundred and fifty eight, and deliver to the Actuary of the said Company as particular an account of the said loss and damage as the nature of the case would admit, signed with his own hand, and accompanied with his affidavit declaring the said account to be true and just, 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 fire originated so far as he knew or believed and whether 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 July in the year of our Lord one thousand eight hundred and fifty eight, furnished said defendants with a certificate of Wm H. Shickney 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

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was more contiguous to said fire than that of any other notary & who was not concerned in the 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 W^m H. Stickney certified by the 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 the said account and affidavit of the said Plaintiff and that he verily believed that he the said C. Shaden had by misfortune without fraud or evil-practice, sustained loss by the said fire to the amount mentioned in the said affidavit.

And the said Plaintiff further avers that he handed in the said preliminary proofs heretofore to wit, on the twelfth day of July 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 proof for a long space of time, to wit, six weeks.

And the said Plaintiff further avers that the said premium or sum of money in the said Policy mentioned was duly paid to and accepted by said defendants at the time and place and in the manner and form in said Policy in that behalf mentioned. And that the said Policy at the time of said loss was and remained in full force to wit, at Cook County aforesaid whereby and according to the tenor and effect of said Policy the said defendants

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then and there became liable to pay to the said Plaintiff²⁴ the said sum of fifteen hundred dollars, in said Policy mentioned, whereby an action hath accrued to the said Plaintiff 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 wholly refused and still do refuse to the damage of the said Plaintiff to the value of two hundred dollars and therefore he brings his suit &c.

Monroe & Spencer

Attorneys for Plaintiff

And afterwards, to wit, on the sixth day of January A. D. 1859 the said Defendant. by Messrs Ring, Scott & Wilson its Attorneys, filed in the Court aforesaid in said cause, its certain Pleas to the said Plaintiffs declaration in the words & figures following, to wit,

The Circuit Court of Cook County of the
The Great Western Insurance Company } Term A. D. 1858
ado }
Nicholas Shaden }

And the said Great Western Insurance Company, defendant in this suit, by Ring, Scott & Wilson their attorneys, come and defend the wrong and injury when &c. and say that they do not owe the said

sum of money above demanded or any part thereof, in manner and form, as the said Plaintiff hath above thereof complained against them, and of this they the said defendants put themselves upon the country. And the said Plaintiff doth the like &c.

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Per Jo. Scott & Wilson Defts. Attorneys

And for a further plea in this behalf, the said defendant, by leave of the Court, here for that purpose first had and obtained, say that the said plaintiff ought not to have and maintain his aforesaid action against them, because they say, that after the making of the said Deed, poll or Policy of Insurance in the said Plaintiff's Declaration mentioned; the said Plaintiff at the City of Chicago, in the County of Cook and State of Illinois, intentionally set fire to and thereby caused the destruction of the premises in the said Plaintiff's declaration described, for the purpose of defrauding said defendants, and this the said defendants are ready to verify. Wherefore they pray judgment &c.

And for a further plea in this behalf, the said defendant, by like leave of the Court here for that purpose first had and obtained, says that the said Plaintiff ought not to have or maintain his aforesaid action against them, because they say that the said Plaintiff was guilty of fraud and false swearing at the place aforesaid in the proofs which the said plaintiff presented to said defendant in which the said plaintiff claimed indemnity

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by him the said plaintiff sustained on account of the destruction by fire of the premises in said plaintiff's policy of insurance described; in that said plaintiff swore that "the cash value of the house being the subject insured is seven hundred dollars." Whereas said Plaintiff well knew that said house was not worth more than five hundred dollars. And the said defendants aver that the said plaintiff was guilty of fraud and false swearing in said proofs as aforesaid ~~in that~~, in that said plaintiff swore that "he has no knowledge or belief whatever of the manner in which said fire occurred" whereas on the contrary said plaintiff well knew the manner in which said fire occurred, and this the said defendants are ready to verify. Wherefore they pray judgment &c.

And for a further plea in this behalf, the said defendants, by like leave of the Court here for that purpose first had and obtained; say act's now, because they say that the said plaintiff used no coercion to save his property from destruction by fire, and this the said defendants are ready to verify. Wherefore they pray judgment &c.

Ring Scott & Wilson
Plffs. Attorneys.

And afterwards, to wit, on the 14th day of April A.D. 1860 the said Plaintiff by his said Attorneys filed in the Court aforesaid, in said cause his certain Replication and Demurrer in the words & figures following, to wit,

Nicholas Staaden
 vs.
 The Great Western
 Insurance Company

Circuit Court of Cook County

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And the said Plaintiff as to the second plea above pleaded, saith preclusion because he says that he did not set fire to and thereby cause the destruction of said premises for the purpose of defrauding said Defendants. And of this the said Plaintiff puts himself upon the country &c.

And as to the third plea of the said Defendants above pleaded the said Plaintiff says preclusion because he says he was not guilty of fraud and false swearing in manner and form as in said plea specifically charged. And of this the said Plaintiff puts himself upon the Country &c.

Monroe Spencer
 Atty for Plff.

Nicholas Staaden
 vs.
 Great Western Insurance Company

Circuit Court
 of Cook County

And as to the last plea of the said Defendant above pleaded, the said Plaintiff saith the same is insufficient in law and that the said Plaintiff is not bound to answer the same.

Monroe Spencer

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X

And afterwards, to wit, on the 18th day of April in the year last
aforesaid the said Plaintiff filed in the Court aforesaid a certain
Policy of Insurance in the words and figures following, to wit,

\$1500⁰⁰

The

No. 174

Great Western Insurance Company.

Officers

President, James H. Pees. Vice President, Hart L. Stewart,
Actuary, Henry Bandt, Secretary, Henry W. Zimmerman
Treasurer, H. A. Tucker.

By this Policy of Insurance, The Great Western Insu-
rance Company, in consideration of Thirty ⁰⁰/₁₀₀ Dollars
to them paid by the assured hereinafter named, the
receipt whereof is hereby acknowledged, Do Insure Nicholas
Maaden, Against loss or damage by Fire to the a-
mount of Fifteen hundred dollars, on his frame building
occupied as a Hardware store, Tin shop and dwelling, sit-
uated on the West side of N. Clark St. between Superior st.
and Chicago Avenue and known as number 219, City of
Chicago, Illinois.

\$1500⁰⁰

Five months

@ 4%

\$30⁰⁰

And the said Company do hereby promise and agree
to make good unto the said assured, his Executors, Adminis-
trators and Assigns, all loss or damage, not exceeding in
amount the sum insured, nor exceeding the interest of
the assured therein, as shall happen by Fire to the property as
above specified, from the nineteenth day of January one

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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~~

X

And afterwards, to wit, at the April term of said Court, to wit, on the 18th day of April A. D. 1860 the following proceedings, among others, were had and entered ^{of record} in said cause, to wit,

Nicholas Shaddin

vs.

The Great Western

Insurance Company

Debt

This day comes the said Plaintiff by Messrs. Monroe & Spencer, his Attorneys, and the said Defendant by Ring, Scott & Wilson its Attorneys also comes and by leave of the Court, the Defendant withdraws its 2nd 3rd & 4th special pleas herein, 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, James Hussey, William H. Wilbur, J. R. Allen, L. P. Holmes, Thomas C. James, Enoch Denman, William G. Sherman, David Bloom, John W. Lambier, C. W. Fenn, A. B.

L, L,

Pickerson, and William Arbuckle, who being duly elected trial and sworn, well and truly to try the issue joined aforesaid, and a true verdict render according to law and the evidence, and after hearing all the evidence adduced by the parties, the arguments of Counsel as well on the part of the Plaintiff as of the Defendant, and the instructions from the Court, retire to consider of the verdict under the charge of a sworn officer of the Court, with directions from the Court, that when they shall have agreed upon a verdict they thereupon sign and seal ^{up} the same and afterwards separate to meet the Court on the coming in thereof to-morrow morning at nine o'clock.

And afterwards, to wit, at the same term of said Court last aforesaid, to wit, on the 19th day of the month of year last aforesaid, the following further proceedings, among others, were had and entered of record therein in said Cause, to wit,

Nicholas Shaden

vs.

The Great Western
Insurance Company

} Debt

This day again came as well the said Plaintiff by Monroe & Spencer, his Attorneys, as the said Defendant by Ring Scott & Wilson, its Attorneys and the Jury aforesaid having agreed upon and sealed their verdict return into Court and say. We the Jury find the issues for the Plaintiff, and that the Defendant owes and is indebted unto the Plaintiff in the sum of one thousand

45-

and five hundred dollars for his debt in said declaration mentioned, and assess the Plaintiff's damages by reason of the detention thereof to the sum of one hundred and forty five dollars and fifty cents. Whereupon the said Defendant by its Attorneys, moves the Court for a new trial of said cause.

And afterwards, to wit, at the June term of said Court, to wit, on the 26th day of June in the year last aforesaid, the following further proceedings were had and entered of record therein, in said cause, to wit,

Nicholas Maaden.

vs.

The Great Western Insurance Company

Debt

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This day again come as well the said Plaintiff by Monroe & Spencer his Attorneys, as the said Defendant by Ring, Scott & Wilson its Attorneys and counsel having been heard as well in support of the motion of the Defendant heretofore entered for a new trial of said cause as in opposition thereto and the Court being now fully advised in the premises doth order that said motion be overruled and the same hereby is overruled accordingly.

Wherefore it is considered by the Court that said Plaintiff do have and recover of the said Defendant his debt of one thousand and five hundred dollars, and also his damages of one hundred and forty five Dollars and fifty cents making in all the sum of one thousand six

1500,00
145,50
1645,50

hundred and forty five dollars & fifty cents, in form as afore-
said, ^{by the Jury aforesaid} assessed together with his costs and charges by him about
his suit in this behalf expended, and have execution therefor.

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47,

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 original writs & proceedings had and entered of record in a certain cause late pending in said Court on the Common Law side thereof, wherein Nicholas Staaden was Plaintiff and The Great Western Insurance Company Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Eight day of November A. D. 1860

W. L. Church Clerk.

Dec \$10.⁰⁰

In the Supreme Court of the
State of Illinois.

Third Grand Division

The Great Western

Insurance Company

Plaintiffs in Error

vs

Nicholas Staaden

Defendant in Error

April Term A.D. 1861,

And now come the said Great Western
Insurance Company Plaintiffs in Error
by their Att. -y Mr. M. W. Windett,
and say, That in said judgment and
Record of Proceedings had in the Cook County
Circuit Court between the said parties,
There are divers great and manifest
Errors, and among others in the, to-wit;

The said Court erred in rendering
The said judgment against said Plaintiffs in
Error, and in favor of said defend-
-ants in Error, in the Court below, upon
his said declaration filed in said Court, and
record - and upon said Record, Mr. M. W. Windett

Atty for Pls in Error

And the said defendant in error, by Abousove
& Spencer his attorneys, says there is no error
in the foregoing record & proceedings.

Witness my hand
at St. Louis, Mo. this 1st day of May 1861.

Circuit Court of the

Nichols Station.

Great Western Ins. Co

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Complete Record

Filed Apr 18. 1861

W. L. Smith

Clk

1861

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