No. 13045

Supreme Court of Illinois

Howard Marine & Fire Ins.Co.

---

vs.

Cornick et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 101.

1860

Howard Fire Ins Co
vs
Cormick et al

Behavior

13045

STATE OF ILLINOIS.

Third Grand Division Supreme Court.

THE HOWARD FIRE AND MARINE INSURANCE COMPANY OF PHILADELPHIA,
Plaintiffs in Error,
vs.
SAMUEL H. CORNICK, FRANCIS C. CROSS AND ROBERT C. CLARK.

April Term, 1860.

Appeal from.

RECORD PAGE.

II. Suit brought by Defendant in Error against Plaintiffs in Error. Summons returnable in April Term, 1858.

III. Narr in covenant, upon a Policy of Insurance, alleges that Policy was issued on the 6th of September 1857, upon goods in stores Nos. 131 and 133 South Water Street, in Chicago.

XXII.&XXXVII. Defendants pleaded *non est factum*, and several special pleas, alleging that the purpose for which the building in which the goods insured were kept was used, was not correctly and truly represented and warranted in the said Policy and application and survey, and that the same was

XXXIX. & XL. used for other and different purposes than those for which it was represented and warranted to be used, in the application and survey which formed a part of the Policy.

Also that, That at the time of the issuing of the Policy, the plaintiffs by their application and survey, which forms part of the Policy, represented and warranted that there was but one tenant in

XXXIX & XL. the said building.

Whereas, there was in fact about twenty tenants occupying the building. These facts were set up in the special pleas in various ways.

XLVIII. GENERAL REPLICATION.—Special replication was put in and stricken out, with leave to give the

XVII. facts set up in them in evidence.

XVII. Cause was tried in April Term of the Cook County Circuit Court, 1859, and verdict for

XIX. plaintiffs rendered by the jury, $5,400, and plaintiffs remitted $600 of the damages. On the trial

LXII. of the cause, the plaintiffs offered in evidence the Policy of Insurance and Conditions and Application.

The seal to the Policy was an impression upon paper at the left hand corner of the Policy, without wax or any other adhesive substance, and without any scroll or other seal except the im-

LXXX. pression upon paper.

To the introduction and reading of said Policy in evidence, the counsel for defendants objected, upon the ground, that the Policy was not sealed, and the action being covenant it was inadmissable under the pleadings, which objection was overruled by the Judge who then and there

LXXX. decided that an action of covenant could be maintained upon such an instrument, to which decision and opinion the defendants, by their attorney, then and there excepted.

The plaintiffs next gave in evidence proof of loss, &c., and rested their case.

LXXX. The defendants then introduced as a witness H. H. Tappen, who testified that he knew the

LXXXI. premises described in the Policy and occupied by plaintiffs. That witness occupied the second floor of the two buildings as a clothing store up to the time of the fire. The upper part was divided into sleeping rooms and occupied by different persons; could not say how many of the rooms were occupied; there were several, but whether a dozen, he could not say; those occupied were furnished with beds; some of them were occupied up to the time of the fire. On his cross-examination, he

LXXXII. testified, that he did not know of more than one tenant, or lessee of Dunham, the landlord and lessor of the premises. Witness occupied as sub-tenant of plaintiffs'.

The plaintiffs further proved by John Summerfield, that he knew the premises, occupied one of the rooms for six or eight weeks prior to and up to the time of the fire; thinks all the upper rooms were occupied up to number ten.

LXXXII to LXXXIX. The defendants next read in evidence the deposition of Francis H. Cross, one of the plaintiffs, by which it appears that a large number of tenants occupied the upper rooms up to the time of the fire.

The defendants then rested their case.

LXIII. The Policy of Insurance read in evidence, is dated the 6th of September 1857 and contains the following, among other, clauses: "By "this Policy, the Howard Fire and Marine Insurance Company of Philadelphia, in consideration of "$62 50, &c., do insure Cornick, Cross & Co. against loss or damage by fire to the amount of five "thousand dollars, on the following property, as described in Application, No. 14, *which is hereby "declared to be a part of this Policy and a warranty on the part of the assured.*

RECORD PAGE.

Also the following:

"The loss or damage to be estimated and to be paid within sixty days after notice, proof and
LXIV. "adjustment thereof, in conformity to the conditions annexed to this Policy, unless the said Insur-
"ance Company shall within thirty days after the proof of such loss or damage, give directions for
"rebuilding or repairing, or if merchandise or personal property, restoring the same as before the fire."

Also the following clause:

"And the assured hereby covenants and engages that the representations given in the appli-
LXV. "cation for this insurance, is a warranty on the part of the insured and contains a just, full and
"true exposition of all the facts and circumstances in regard to the condition, situation and value of
"the property insured, &c., and if any fact or circumstance shall not be fairly represented, &c., then
"the Policy to be void."

Also the following:

LXVII. "It is also declared, that this Policy is made and accepted in reference to the written and
"printed application whereon it is issued, and also to the conditions hereto annexed, which are
"hereby made a part of this Policy, and to be used and resorted to, in order to explain the rights
"and obligations of the parties hereto, in all cases not herein otherwise specially provided for, and
"it is also agreed and declared by the parties hereto, that no *condition, stipulation, covenant or*
"*clause hereinbefore contained shall be altered, amended or waived*, or any clause added to these
"presents, except by writing endorsed hereon or annexed hereto, by the President or Secretary with
"their signatures affixed thereto."

LXXIII. The 10th condition annexed to the Policy, contains the following clause, "And said company
"shall in no case be deemed to have waived a full literal and strict compliance with, and performance
"of each and every of the terms, provisions, conditions and stipulations in this policy contained and
"hereto annexed, to be performed and obtained by, and on the part of the insured or any one
"claiming by, through or under him, to comply with and observe and perform the same, shall have
"occurred. *And if any agent of this Company in the transaction of their business, shall assume to*
"*violate these conditions, such violation shall be construed to be the act of the insured, and shall ren-*
"*der void the Policy.*"

In the application were the following questions and answers;

LXXVII. 7. For what purpose is the building used? } Wholesale and Retail Hardware.

How many tenants? } One.

The plaintiffs then introduced as a witness, William H. Bunker, who testified, that he knew Mr.
LC to LCIV. Ellsworth, the Agent of the Howard Fire and Marine Insurance Company. That on the 27th or 28th of August, 1857, he called upon Ellsworth to get a Policy of Insurance upon the goods in the same buildings to Armstrong, Cornick & Co., the predecessors of the plaintiffs in this suit, and obtained such policy; that on the application for that policy, he told Ellsworth that Darling had a stove in the front room on the fifth floor; that there were other lodgers on same floor who had a stove; that those two were all he could recal on that floor. Ellsworth then asked how many tenants there were in the building. Witness told him he could not tell exactly, that he would describe the building and give him the number of tenants; that he commenced at the bottom of the building and told him the purposes the building was occupied for and what the building contained, &c.

To all this testimony the defendant objected and the objection was overruled and the defendants excepted.

This witness never saw the policy or application in this suit until after they were made out.

LCVII. The plaintiffs also proved by Wadsworth that the application in this case was made out by Ellsworth. To this testimony the defendants objected and the objection was overruled by this Court.

LCVII. On cross examination of Bunker, he testified that the conversation of the 27th or 28th of August, 1857, related to the application for a Policy for *Armstrong*, Cornick & Co. Of the application and insurance in this case he had no personal knowledge.

The Counsel of defendants then moved to strike out all the conversation testified to by the witness Bunker in relation to the application for insurance by *Armstrong*, Cornick & Co., which motion the Court overruled and defendants excepted.

The Judge gave the following instructions for the plaintiffs, to wit:

1st. That if the Jury shall believe, from the evidence, that at the time of the making of the application in this case, the plaintiff gave full and exact information to Ellsworth, the Agent, as to the number of the tenants in the occupancy of the building in question and the use thereof by each; that with such information furnished, the agent himself filled up the application in question as the same now is, and induced, by mistake or otherwise, the plaintiff to sign the application and survey; then, though the jury should find from the evidence that the building was occupied by more tenants and for other business than named in the application, the defendants are estopped from making such objection to prevent fraud and injustice, and the plaintiffs will be entitled to recover.

113 3 126

To which instruction so given by the said Judge to the jury, the defendants, by their counsel, then and there excepted.

The said Judge also gave to the jury, on the part of said plaintiffs, the following instruction:

2d. Parol evidence is admissable to show that all the facts are communicated to the agents of the Company, at or before the time of the making of the application in question and notice to the agent is notice to the defendants.

To which instruction the defendants, by their counsel, then and there excepted.

The said Judge then and there further instructed the jury as follows, on the part of the plaintiffs.

3d. That if the Jury believe from the evidence, that at the time of making out the application in this case the defendants' agent had a full knowledge of all the facts as to the number of occupants in the building, and the use made by each occupant of that part of the building occupied by each; that the agent, upon such information, filled up blanks, the application and survey are evidence, and produced the plaintiffs' signature, thereby representing that the same were mere forms, or otherwise; that the plaintiffs signed the same in good faith, believing that the facts were correctly stated therein, then the agent's omission to state the facts truly, will not avoid the policy, or conclude the plaintiffs form alledging the truth, to which instruction so given the said defendents by their counsel, then and there excepted.

The said Judge. then and there, further instructed the Jury, on the part of the plaintiffs, as follows:

5th. The Court is asked to instruct the Jury, that by the terms of the insurance the money became due and payable within sixty days after proof of the loss is notified to the Company and the same will bear interest at the rate of six per cent. per annum from that time until this date.

To which instruction so given the said defendants, by their counsel, then and there excepted.

The Court, then and there, further instructed the Jury on the part of the plaintiffs as follows:

6th. If the Jury believe, from the evidence, that the Insurance Policy sued upon in this case was made, and a loss has been suffered as therein set forth, and that the money insured is due and unpaid, and that the proof of loss was duly made and notified on the 26th day of November, 1857, or on some other day, then the Jury will give interest on the amount they may find due and unpaid, at the rate of six per cent. per annum, from and after the expiration of sixty days after the proofs of loss are shown by the evidence to have been furnished.

To which instruction, so given as aforesaid, the said counsel for the defendants did, then and there, except.

The defendants, by their counsel, then and there, prayed the said Judge to give the following instruction to the Jury, in the behalf of said defendants:

1st. If the Jury believe, from the evidence, that the premises described in the Policy sued upon, or any part thereof, were, at the time of the issuing of said Policy, occupied by other tenants than said plaintiffs, then said Policy is void and the plaintiffs cannot recover in this action.

Which said instruction, so prayed, the said Judge refused to give, and in lieu thereof gave the following: If the Jury believe, from the evidence, that the premises described in the Policy sued upon, or any part thereof, were, at the time of the issuing of said Policy, occupied by other tenants than said plaintiffs, then said Policy is void, and the plaintiffs cannot recover in this action, unless the proof establishes to the satisfaction of the Jury a state of facts estopping the defendants from taking advantage of the condition in the Policy.

To the refusal of the said Judge to instruct the Jury as above requested, and also to the instructions given by the said Judge, as by him amended and added to as above stated, the said defendants did, by their counsel, then and there, except.

The defendants, then and there, further prayed the said Judge to instruct the said Jury, on the behalf of said defendants, as follows:

2d. If the Jury believe, from the evidence, that a part of the premises described in said Policy was occupied, at the time of issuing said Policy, as a clothing store then said Policy is void and the plaintiffs cannot recover in this action.

And the said Judge then and there refused the instruction as above prayed for, but gave the same with the following amendment, alteration, addition and qualification, to wit: "Unless the proof establishes, to the satisfaction of the Jury, a state of facts estopping the defendants from taking advantage of the condition in the Policy."

To the refusal of the said Judge to instruct the Jury as above prayed, and also to the giving of said instruction as amended, added to and qualified by the said Judge, and to each of them, the said defendants did, then and there, except.

The said defendants, then and there, prayed the said Judge further to instruct the said Jury, in the behalf of said defendants as follows:

3d. If the Jury believe, from the evidence, that the upper rooms of the premises described in said Policy were, at the time of the issuing of said Policy, rented to parties other than the said

plaintiffs, for sleeping rooms or any other purpose, then said Policy is void and said plaintiffs cannot recover.

Which instruction, as above prayed for, the said Judge, then and there, refused to give, and in lieu thereof gave the same with the following additions, alteration and qualification thereto attached, as follows: "Unless the proof establishes, to the satisfaction of the Jury, a state of facts estopping the defendants from taking advantage of the condition in the Policy."

To the refusal of the said Judge to give the said instruction as above prayed for, and also to the giving of the same with the amendment, alteration and qualification by said Judge, as above set forth, and to each of them, the defendants by their counsel, then and there, excepted.

The defendants, then and there, further prayed the said Judge to instruct the said Jury, on the part of the said defendants, as follows:

4th. If the Jury believe, from the evidence, that at the time the application for insurance in this case was made, and the Policy issued, there were more tenants in the building than is stated in the application, then the plaintiffs cannot recover, unless the Jury shall be satisfied, from the evidence, that the defendants, when they issued the Policy, knew of the true number of tenants in said building at the time the Policy in this case was issued, and the communications made to the agent at the time an application was made for another Policy by Armstrong, Cornick & Co. are not of themselves sufficient proof of such fact.

The Judge refused to give said instructions as prayed for, but gave the same after first erasing the following lines, to wit: "And the communications made to the agent at the time an application was made for another Policy by Armstrong, Cornick & Co. are not of themselves sufficient proof of such fact."

To the refusal of said Judge to instruct the Jury as prayed for by said defendants, and to the giving of the same as altered by said Judge, the defendants by their counsel, then and there, excepted.

The defendants, then and there, further prayed the said Judge to instruct the said Jury, on the part of the said defendants, as follows:

5th. If the Jury believe that at the time of the application and issuing of the Policy in the case, the buildings in which the goods were situated were at the time the Policy was issued used for other purposes than those mentioned in the application, the plaintiffs cannot recover, unless such fact was communicated to defendants or known by them at the time of the application and issuing of the Policy, and the communications made to the agent at the time of the application by Armstrong, Cornick & Co. are not of themselves sufficient proof of such fact.

And the said Judge, then and there, refused to give such instruction so as aforesaid prayed for, but erased the following part thereof: "And the communications made to the agent at the time of the application by Armstrong, Cornick & Co. are not of themselves sufficient proof of such fact," and gave the balance of said instruction in lieu of the one prayed for.

To the refusal of the said Judge to give the instruction prayed for, and also to the giving of the same as altered, the said defendants by their counsel, there and an then, excepted.

The defendants further prayed the said Judge to instruct the Jury as follows:

7th. There being no evidence that the defendants did not restore the property alleged to be lost at the fire, according to the conditions of the Policy in this case, the plaintiffs are not entitled to recover.

The said Judge refused to give said instruction, and the said defendants, then and there, excepted.

To the giving of each and all of which instructions, the plaintiffs, then and there, excepted.

The Jury found a verdict for the plaintiffs as hereinbefore stated, and the defendants moved the Court for a new trial and in arrest of Judgment on the following grounds.

1st. The Court erred in overruling the objection to the admission of the Policy in evidence and in deciding that an action of covenant could be maintained upon the Policy.

2d. The Court erred in overruling the several objections to the testimony of William H. Bunker in relation to the conversation with Ellsworth.

3d. The Court erred in overruling the motion to strike out the testimony of Bunker in relation to his conversations with Ellsworth.

4th. The Court erred in giving the following instructions on the part of the plaintiffs, to wit: Nos. 1, 2, 3 and 5.

5th. The erred in refusing to give the instructions of defendants, to wit: Nos. 1, 2, 3, 4, 5, 6 and 7; and in making the amendments and alterations in Nos. 1, 2, 3, 4, 5 and 6.

That the verdict was against law.

6th. That the verdict is against evidence.

7th. The judgment should be arrested, because it is not alleged in the declaration that the defendants had not replaced the goods, and had not complied with the terms of their Policy, as therein stated.

The Court overruled the said motion for new trial, and also the motion in arrest of judgment, to which decision of said Judge the said defendants, then and there, excepted, and a judgment was entered in favor of the plaintiffs for the amount of the verdict and costs.

E. A. & J. VAN BURENS, *Defendants' Atty's.*

Supreme Court

The Howard Fire and
Marine Ins Co.
Plffs in Error
vs
Samuel H Cornick
et al Defts in Error

Abstract.

Printed by Beach & Barnard, 14 South Clark Street.

SUPREME COURT,

APRIL TERM, A. D. 1860.

THE HOWARD FIRE AND MARINE INSURANCE COMPANY OF PHILADELPHIA,

Plaintiffs in Error.

VS.

SAMUEL H. CORNICK,
FRANCIS C. CROSS,
ROBERT C. CLARK.

Defendants in Error.

The plaintiffs assign the following causes for error :

1. The Judge erred in overruling objection to the introduction of the policy of insurance in evidence.

2. The Judge erred in deciding that an action of covenant could be maintained on the policy in this case, the same not being under seal.

3. The Judge erred in admitting the testimony of William H. Bunker, and in allowing evidence to contradict the representations and warranty made by the assured in the policy, condition and application.

4. The Judge erred in overruling the motion to strike out the testimony of Bunker.

5. The Judge erred in allowing evidence to contradict the warranty in the policy, condition and application, or to show a waiver of any of them.

6. The Judge erred in refusing to give the following instructions of defendants as proposed by defendants, to-wit: Nos. 1, 2, 3, 4, 5 and 7.

8 The Judge erred in adding to and amending the following instructions of defendants, to-wit: Nos. 1, 2, 3 4 and 5, and in giving the same as amended.

9. The Judge erred in refusing to grant a new trial on motion of defendants.

10. The Judge erred in overruling the motion of defendants to arrest the judgment.

11. The judgment is against law and also against the evidence.

E. A. & J. VAN BUREN,

Attorneys for Plaintiffs in Error.

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Supreme Court

The Howard Fire & Marine Insurance Co. of Phila

Pltfs in Error

vs.

Samuel H. Cornick

Francis C. Cross

& Robert C. Clark

Defts in Error

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Brief & Points

Abstract

E. A. & J. Van Burens

Attys for Pltfs in Error

Filed Apr. 18. 1860

L. Leland

Clerk

Printed by Beach & Barnard, 14 South Clark Street.

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VS.

SAMUEL H. CORNICK,
FRANCIS C. CROSS,
ROBERT C. CLARK.

Defendants in Error.

PLAINTIFFS' POINTS.

1.

The action of covenant cannot be maintained. The policy is not sealed except by an impression upon paper, without wax or any other adhesive substance.

This is not a seal at common law.

5 John, R. 239. 2 Hill, (N. Y.) 227. 3 Hill, 493. 4 Cowen, 508.

In the cases above cited it is held that the seal applies to the remedy, and therefore is to be governed by the law of the State where the contract is enforced. There is no law in this State authorizing a corporation to use any particular kind of seal, we therefore submit it is to be governed by the common law; we suppose the provisions in the practice act of this State does not apply to corporations. If our

position is right then the Judge erred in overruling the objection to the admissability of the policy in evidence.

II.

The Court erred in overruling the objection to the evidence of Bunker, and in admitting his testimony. The policy, by its terms, makes the conditions and application and survey a part of the policy, and makes every representation in them a *warranty* on the part of the assured. (Abstract page 97.)

In the tenth clause of the conditions it is agreed that any misrepresentations shall avoid the policy. (Abstract 95.)

In the application the plaintiff warranted that the building in which the goods were situated were used only as a "*Wholesale and Retail Hardware.*"

They also warranted that there was but *one* tenant in the building.

The right to recover depends upon the question whether there has been a breach of this warranty. If there has been then the plaintiffs cannot recover; a warranty must be *strictly true*, whether the thing warranted be material or not.

Burritt vs. Saratoga Mutual Insurance Co. 5 Hill, (N. Y.) 188.
Alston vs. The Mechanics Fire Insurance Co. of Troy. 4 Hill (N. Y.) 329.
Mead vs. North-Western Insurance Co. 3 Selden, 530. 2 Kernan, 289.
Illinois Mutual Fire Insurance Co. vs. Marseilles Manufacturing Co. 1 Gillman R, 264—265

Parol evidence is not admissable to contradict the policy. See 4 Hill above cited.

Again, the policy contains this clause: "It is also declared that this policy is 'made and accepted in reference to the *written and printed* application, whereon it 'is issued, and also to the conditions hereto annexed, which is made part of this 'policy, &c."

Now, here the parties agree to be bound by the written and printed representations. Have not the parties the right to make their own agreements?

Again, in the latter part of the policy is this clause: "And it is also agreed 'and declared, by the parties aforesaid, that no condition, stipulation, covenant or 'clause hereintofore contained, *shall be annulled or waived*, or any clause added to 'these presents except by writing endorsed hereon, or annexed hereto, by the 'President or Secretary with their signatures affixed thereto."

By this agreement both parties guarded against any representations or agreements *outside* of the written and printed agreement. No representations or acts of the agent could in any way affect the rights of the insurers. Courts will interpret and enforce, but not make contracts for parties.

III.

This evidence was inadmissable upon another ground. The witness testified to a conversation with the agent of the company and related to the application made by other parties, to-wit: *Armstrong*, Cornick & Co. That policy was issued on the 28th day of August, 1857.

The policy in this case was issued on the 6th of September, 1857.

The witness was not present when the application was made or when the policy in this case was issued, and knows nothing of what then occurred. Surely such evidence cannot be admitted to destroy the written agreement of the defendants, made at another time and with other parties. We are not to suppose that afterwards, and when this policy was issued, any representations were made other than those in writing by the parties.

IV.

The first instruction of the Judge for the plaintiffs was wrong, because:

1. The effect of the instruction was to advise the Jury that they might disregard the argreement between the parties

2. There was not a particle of evidence to base it upon—there is not a particle of evidence to show that at the *time of making the application* in this case the plaintiffs gave any information, except as appears by the written and printed application.

V.

The Judge erred in giving the second instruction for plaintiffs, because :

1. Parol evidence is not admissable to contradict or vary a written agreement.

2. In this case it was expressly agreed by the parties that the policy *was made and accepted in reference to the printed and written application*, and that no *covenant, condition or clause should be altered, annulled or waived by the agent.*

VI.

The Judge erred in giving the third instruction for the same reasons urged against the first instruction, and because :

2. The question of good faith has nothing to do with the right to recover. The action is upon the written and printed agreement. "A warranty by the assured 'in relation to the existence of a particular fact must be *strictly true* or the policy 'will not take effect." 5 Hill, (N. Y.) 193.

"The question whether a warranty has been broken can never depend upon 'knowledge or ignorance or *intent* of the party making it, touching the acts or the 'fact constituting the breach." 3 Selden, 533.

"A mistake or omission in his representations of the risk whether wilful or 'accidental, if material to the risk insured avoids the contract, and a warranty being 'in the nature of a condition precedent, must be fullfilled by the insured before 'performance can be enforced by the insurer whether the thing warranted was ma-'terial or not; whether the breach of it proceeded from fraud, negligence, mis-

'representation or any other cause, the consequence is the same." 1 Gilman repts. page 267.

VII.

The Court erred in refusing to give the instructions Nos. 1, 2, 3, asked for by defendants. These instructions place the case upon the question of a breach of the warranty on the part of the defendants as contained in the policy, &c., and we submit that that was the proper issue.

The Court however committed a greater error in tacking to each instruction an authority for the Jury to decide an intricate question of law, in these words: "Unless the proof established to the satisfaction of the Jury, a state of facts 'estopping the defendants from taking advantage of the condition in the policy."

How are the Jury to know what an estoppel is? The learned Judge does not tell them. He does not tell them what facts would constitute an estoppel? but leaves the naked question of law to the Jury. Nobody had talked or thought about an estoppel. The Jury, no doubt, found that the fact, that the defendants were a corporation, was sufficient to constitute an estoppel; we do not suppose the learned Court intended to convey the idea that that fact *alone* would constitute an estoppel, though we apprehend it will be difficult to find any other fact in the case upon which the instruction was based.

VIII.

The Court also errred in refusing to give the 4th instruction of defendants as prayed for; and also in giving it after he had mutilated it. It was not asked for in that maimed condition. If the agreement between the parties is to control, then the instruction, as asked, was right, because the agent is expressly forbidden by the policy to do anything that shall alter or waive the representations or conditions, therefore, the facts communicated to the agent could not certainly of themselves control or effect the defendants.

IX.

The Court also erred in refusing to give the 5th instruction as prayed for. It certainly cannot be claimed that the communications made to the agent at the time of the application by another firm, and some two weeks before this application was made, was of itself sufficient proof, that such communications were made and facts existed at the time the policy in this case was issued; yet the the learned Judge refused so to instruct and left the Jury to guess that because certain facts had been communicated to the agent at another time, and between other parties, therefore they had been at this time. Surely this is administering justice upon an uncertain and undefined rule, and, we think, a dangerous one, even against a corporation.

X.

We submit also that the judgment should have been arrested upon the ground that it is not alledged in the declaration that the defendants had not restored the merchandise, as provided in the policy. The defendants have thirty days after notice of loss to restore the merchandise. The plaintiffs can only sue for and recover a verdict, on failure of defendants, to restore the goods, therefore they must in their declaration aver that fact—they must show themselves entitled to maintain their suit.

E. A. & J. VAN BUREN,

Plaintiff's Attorneys

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Supreme Court

The Howard Fire & Marine Insurance Co. of Phila.
Plffs in error

vs.

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Briefs & Points.

E. & A. & J. Van Buren
Attys for Plffs in Error

Filed Apr. 18. 1860
L. Leland
Clerk

Supreme Court –

April Term 1860.

Samuel H. Cornick
and others, defendants in Error
ad.
The Howard Fire & Marine Insurance
Co – plaintiffs in Error –

Defendants Points –

1

The action of Covenant was properly brought – The Policy was sealed with the usual and only seal of the Company –

The impression was ~~made~~ not in wax but in the margin of the instrument itself –

A Scrawl is a good seal by statute both in Illinois and Penn, where ~~Policy~~ Insurance Co. is incorporated

"L. S" printed is a good seal,
Eames ~~impleaded &c~~ v. Preston
20 Illinois p 389 –
#3 Scammon Rep. p. 13

A sufficient seal to convey ~~a~~ real estate, should be sufficient to sustain an action of Covenant –

The act makes no distinction in instruments executed by individuals or Corporations –

II.

There was no breach of Warranty on the part of the assured — as contended for by pltffs in error.

The application was for insurance, on the merchandize contained in the five story brick building &c — and the Policy contained the same description and was issued on the same property —

The Building was owned and insured by other parties —

The applications conditions and survey are made part of the Policy — the it is granted — and any allegation in respect to the property insured must be true —

The ~~Conditions~~ requirements in regard to the insurance of buildings are found in the first clause of Conditions of Insurance —

The requirements in regard to Merchandize are to be found in the ~~second~~ fourth clause

The evidence showed these requirements and representations as to the insured property to have been strictly true —

The Policy contemplates that the applicat~~ion~~ and Survey shall be deemed a warranty as to the property described, and no more —

see Policy, 2nd line — also in 23 line from bottom of first page, the language is "

"And contains a just, full and "true exposition of the condition, situation "and value of the property insured." —

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"And contains a just, full and "true exposition of the condition, situation "and value of the property insured." —

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is not denied are duly proved. as described
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" Compliance with the exact meaning
" of his engagement, which is not to be
" extended by Construction"

2 Curtis C. C. Rep. p. 600.

"In a policy of Insurance no representation
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Where the Insurance was taken on both the Building and Contents, the Court held that Policy was good as to the personal property, though ~~the~~ void as to the Building by variance between the warranty and the proof in regard to situation of Building

French v. The Chenango Mutual Insurance Co.

7th Hill Rep. p. 125 — Beardsley J.

"Now although the Policy may be void as an "insurance on the paper mill, it still ~~was~~ "may be valid as to the personal property

The condition relied upon by the defendants, refers exclusively to application for insurance upon buildings — It requires the applicant to state where the property is situated, its materials dimensions, its distance from other buildings, and the purpose for which it is occupied — All this is sensible and intelligible when understood in reference to buildings, but absurd and unintelligible when applied to personal property. The attention of the Circuit Judge does not appear to have been called to the fact that this policy was upon personal property as well as upon a building — The plaintiffs were entitled to recover the value of the personal property ensured" —

The application in this Case was referred to in Policy as forming part of Policy — It failed to comply with

Conditions of Insurance, in omitting to State Certain buildings within the Body.
9 Barb N.Y Rep. p. 191—
See also 13 Ill Rep p. 93.

7

The conclusion then is that that the ~~representations in the Policy, as to the~~ representations in Policy, Survey and Applications as to the property insured can at most be deemed ~~a Warranty and~~ subject to the Strict Rules that govern Warranties—

All other matters are representations merely, and to be governed by the Rules that apply to representations ~~only~~

"If Agent makes the Survey, the Insured
" is not bound ~~to~~ by any mistake in
" the Application, and parol evidence
" is admissible to show actual Statements
" made to Agent—

2 Ohio (New Style) Rep p. 452. 23 Penn (11 Harris) Rep p 50

Roth Vs The City ~~of~~ United Insurance Co. 6 mc Lean Rep. 324

" Notice of existing mortgage given
" Verbally to Agent is sufficient,
" though required in writing by Policy "—
Martin Vs Madison Co. Insurance Co
11 Barb Sup Ct Rep N.Y. p. 624—

III.

If there was a Variance between the application and the fact, the Company were Estopped from setting it up.

Ellsworth was agent and Surveyor of the Company - He made out the application Survey and policy in his own handwriting

See Evidence of Wadsworth his co agent -

He had full Knowledge of all the facts ~~and~~ circumstances & Condition of the property and buildings -

The risk was fixed ~~with reference to the pr~~ and premium agreed upon with full Knowledge, given on 28th August -

See evidence of ~~Comick~~ Bunker

and ~~on the~~ one policy taken out then, and ~~one~~ the other, (the one sued upon) taken out twenty days thereafter, as was then understood - a prior policy expiring at that time -

The company were bound to know a change in that time, materially affecting the risk - The evidence of ~~Comick~~ Bunker shows there was none - The agent in his Survey & application ~~under~~ refers to the diagram made on issuing the first policy ~~on the~~ twenty days before -

There was no concealment, no omission no fraud, no change -

It is a case completely illustrating an Estoppel in pais

" Where in an action on a policy ~~of~~ the insurer " defended on the ground of a false " Warranty, but the insurer with a full " Knowledge of the facts inaccuracy of " the Statement made a payments on the " premium note given by the insured which " he had paid, held that the insured were " estopped from setting up the Warranty; " and were liable for the loss "

Beardsley Jus. in
Frost V. The Saratoga Mutual
Insurance Co.
5th Denio Rep. N.Y. p. 134—
2 Greenleaf Ev. p. 328. Sec 406—

" Honesty and good faith demand that they " should not be allowed to make the " objection now, that though Verbally " notified of the incumbrance, for " want of a written notice the policy is " bad— They waived the necessity of " such notice and to prevent fraud and " injustice are estopped now from making " the objection— "

Wright Jus. in Court of Appeals
Amer V. New York Insurance Co
p 263. —4th. Kernan Rep.
Atlantic Insurance Co. V. Wright 22 Ill. p. 474—
Marten V. The Madison Co. Mutual
Insurance Co.
11 Barbour Rep. p 630—
2 Ohio (new Style) Rep. p 452
356

These Points cover the objections made to the instructions as given by the learned Judge.

The Jury found for the Ptff below, on the whole evidence —

The Question of Warranty and how far it extended, and the Estoppel in pais were properly left to the Jury.

The Court will see by the whole Evidence that substantial real justice was done between the parties —

At the time of making the application the Insurers were possessed of any information and the rate was agreed upon. Bunkers Evidence, the Clerk of the Agents shows this —

And there was nothing at Variance from the Warranty as far as the Warranty extended by the Policy & application —

James Clapp
Atty & Counsel
for Defts in Error

101 — 22

Supreme Court

S. H. Cornick et al,
Defts in error.

ads

The Howard Fire
& Marine Insurance
Company —

Brief

James Clapp &
W. B. Scales
for Defts in error

FIRE.

No.

THE HOWARD FIRE & MARINE INSURANCE COMPANY

OF

PHILADELPHIA.

Amount Insured,

Dolls.

Premium, - - - - $

Policy and Survey, - - $

$

Register, *Page,*

EXPIRES, *day of* 185

OFFICE, 412 WALNUT STREET,

FRANKLIN BUILDINGS.

The HOWARD



Fire and Marine

INSURANCE COMPANY.

FRANKLIN BUILDINGS, No. 412, WALNUT STREET.

By this Policy, The Howard Fire and Marine Insurance Comp.y of Philadelphia

In consideration of _____ Dollars, the receipt whereof is hereby acknowledged, Do Insure, _____ of _____

Against loss or damage by FIRE to the amount of _____ Dollars on the following property, as described in Application and Survey, No. _____ which is hereby declared to be a part of this Policy, and a warranty on the part of the assured, viz:

_____

_____

_____

PAYMENT of the Premium for continuing the Insurance by this Policy, is acknowledged to have been received as follows:

No.	Date of Receipt.	PREMIUM RECEIVED.	SUM INSURED.	To Expire at Noon.	SECRETARY'S SIGNATURE.

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, subject nevertheless, to all the conditions and requirements entered into by* ..... *with said Company.*

Witness ..... *hand and seal this* ..... *day of* 185

Sealed and delivered in presence of }

.....

.....

APPROVED, *the* ..... *day of* 185

.....

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, subject nevertheless, to all the conditions and requirements entered into by* ..... *with said Company.*

Witness ..... *hand and seal this* ..... *day of* 185

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Sealed and delivered in presence of }

.....

.....

APPROVED, *the* ..... *day of* 185

.....

EXPIRES, ... *day of* 185

OFFICE, 412 WALNUT STREET,
FRANKLIN BUILDINGS.

THE
Howard Fire & Marine Insurance Company
OF
PHILADELPHIA, PA.

CAPITAL 600,000 DOLLARS.

OFFICERS.

PERCIVAL M. POTTS, President.

C. E. SPANGLER, Vice President.

W. H. WOODS, Secretary.

R. T. KENSIL, Treasurer.

DIRECTORS.

P. M. POTTS,	WM. H. WOODS,	CH. G. SOWER,	NATHAN R. POTTS,	H. H. HOUSTON,	W. RAIGUEL,	JAS. E. STILES,
C. E. SPANGLER,	GEORGE HOWELL,	JOHN W. SEXTON,	WM. F. LEECH,	JAS. R. WITHERS,	CHARLES F. NORTON.	H. H. SHILLINGFORD.
ABRAHAM REX,	J. EDGAR THOMPSON,	HERMAN HAUPT,	R. T. KENSIL,	ABR'M P. EYRE,	JOHN H. LEWARS,	

CLASS OF HAZARDS.

The following are considered *hazardous* on account of their great liability to damage, and are charged additional when the stocks are mainly composed of such articles, but do not increase the rate of the building:

Brooms, corn and grain, cabinet furniture (without manufacturing) china, glass and earthenware (unpacked, where straw is not kept.) confectioner's stock, hardware and cutlery, jeweler's stock, laces and ribbons, looking glasses libraries, musical instruments and music, milliner's stock, perfumery, paper hangings, stationers stock, toy and notion stocks (retail,) variety and fancy goods (at wholesale,) willow ware, watchmaker's stock and tools, window and plate glass (in boxes.)

The following trades and occupations, goods, wares and merchandize, are deemed *extra hazardous*, and subject the building and all its contents to additional rates:

Auction stores (selling at night,) apothecaries (prescription only,) brushmakers, boot stores, bookbinders (with steam power,) bookbinders (without steam power) boarding houses (private,) copper plate printers, cotton in bales, coffee houses, china, glass, and earthenware (in boxes, crates or casks, when straw is kept "in vaults" and used,) china, glass, and earthenware (in boxes, crates or casks, when straw is kept "loose" and used.) coppersmiths, (with forges.) confectioner's stock (manufactory,) carpenter's risk on houses while finishing or repairing, druggist's straw (to be kept in vaults.) druggist's straw (if kept loose.) feed stores (if hay or straw be kept in bales,) flax (in bales) gunsmiths (with not over 25 pounds powder in tin canisters,) harness makers, saddle and trunk makers (without manufacturing trunk boxes,) hemp (in covered bales,) hemp (in uncovered bales,) hat finishers, liquors in glass unpacked, and wholesale liquor stores, lamp manufactories and lamp sellers' stocks, lithographers, manufacturers of gold and silverware, optical and mathematical instrument makers, painter's stock, plumber's, printers of newspapers and books (if steam be used,) printers of newspapers and books (without steam,) paints ground in oil, porter houses, public halls, rectifiers of liquors without use of fire heat, rags in bales, rags loose, restaurants, cigar and cigar makers, tin and sheet iron workers, victualing houses.

The following trades and occupations are considered as *specially hazardous*, and will subject the building and contents to additional charge, to be fixed and specified in each case:

Bagging factories, barns, breweries, bakeries, block and pump makers, blind and sash makers, brass workers, camphene, phosgene, and other fluids for burning (except oil.) cabinet makers, carvers and gilders, chemical preparations, coopers, carriage makers, corn mills, cotton mills, carpenter shops, chair makers, candle makers, coffee and spice mills, distilleries, dyers, flouring mills, glue factories, glass blowers, grist mills, hat manufactories, hemp and flax looms, iron foundries, lime unslaked, looking-glass and picture frame makers, livery stables, musical instrument makers, oakum in bales, oil factories, potteries, planing mills, paper mills, public boarding houses, patent medicine compounders, rope makers, rectifiers of liquor with fire heat, starch factories, spirits turpentine, steam engines, saltpetre in quantity, saw mills, soap factories, stables, tar and pitch, turners in wood and metal taverns tobacco factories, theatres, type foundries, upholstery manufacturers, varnish factories, woolen mills.

CONDITIONS OF INSURANCE.

Persons desirous of making insurance, are to furnish the Secretary or Agent of the Company with the following information:

1. Of what material the walls and roof of each Building are constructed, as well as the construction of the Buildings within fifty feet contiguous thereto.

2. Whether the same are occupied as private dwellings, or how otherwise.

3. Where situated, and how many stories high.

Each Building must be separately insured—and in like manner a separate sum insured on the property contained therein.

4. In the insurance of Goods, Wares, or Merchandise, the Building or place in which the same are stored or deposited, is to be described: also, whether such goods are of the kind denominated hazardous or extra hazardous, and whether any manufacturing is carried on in the premises. And if any person shall insure his or their building or goods, and shall cause the same to be described in the Policy otherwise than as they really are, such insurance shall be void and of no effect; or if, after the insurance is effected, either by an original policy, or by the renewal thereof, the risk shall be increased by the erection of buildings, or by the use or occupation of the neighboring premises, or by any means whatsoever, it shall be the duty of the assured to give immediate notice thereof to this Company, pay such additional premium as they shall determine, and obtain their written consent to the continuation of this Policy; otherwise it shall be void.

And if, at any time, the Company shall so elect, it shall be optional with the Company to terminate the insurance, after notice given to the insured, or his representative, of their intention to do so; in which case the Company shall refund a rateable proportion of the premium.

Any Building insured by this Company, becoming vacant or tenantless for a period of thirty days, notice thereof must be immediately given to the Secretary, and his consent thereto obtained in writing, otherwise this Policy shall be void.

5. Property held in trust, or on commission, must be insured as such, otherwise the Policy will not cover such property; and in case of loss, the name of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interest therein. Goods on storage must be separately and specifically insured. If the interest in the property to be insured be a leasehold or other interest not absolute, it must be so stated in the Policy, otherwise it shall be void.

6. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium; or if the premium named in this Policy, or any obligation which may be given for such insurance, or any part of it remains unpaid, or the conditions of such obligation are not fully complied with, this Policy shall be void and of no effect.

7. The interest of the insured in this Policy is not assignable, unless the assent of this Corporation be first obtained; notice of such assigment shall be given before any loss may have happened, and this Company, when so notified, may elect either to continue the insurance, and express the same by endorsement on this Policy, or refund a rateable portion of the premium, for the time of the risk unexpired, and cancel the policy.

8. Notice of *all other* insurances, whether prior or subsequent to the date of this Policy, must be given the Company, and their *consent thereto* endorsed upon this instrument, or otherwise acknowledged in writing, otherwise this Policy shall be of no effect.

9. 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 fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect. And it is mutually understood and agreed that there can be no abandonment to the insurers of the subject insured; and also that this Company or their Agent have the right to examine and take account of the property saved, and that every facility be given to enable them to do so.

If no notice of a loss is given within thirty days from the time when it happened, it shall be discretionary with the Directors to reject or allow the claim, or any part thereof. And no repairs in the premises shall be made after a fire, until notice is given to the Company, and they have had an opportunity to view and examine.

10. Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing to the Company. And as soon thereafter as possible, they shall deliver to this Company a schedule or list of articles destroyed or damaged, stating who are the owners thereof; that at the time of, and immediately before the fire, the subject insured was in, upon, or at the place or location specified in the Policy, and covered thereby, and that the same was either destroyed or damaged (as the case may be) by fire 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 insurances have been made on the same property; what was the whole cash value of the subject insured at the time of such loss, 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, and who were the occupants of such building, and when and how the fire originated, so far as they know or believe, or have any information. When merchandise or other personal property is part[illegible] damaged, the insured shall forthwith cause it [illegible] as good or[illegible] and arranging the various articles, according to their kinds; and cause a list or inventory of the whole to be made. The damage shall then be ascertained by the examination and appraisal of each article by two disinterested appraisers, under oath, one chosen by the Company and one by the insured, and in case of their disagreement, they shall nominate a third person to act as umpire between them; and the award in writing, under the hands of such appraisers, or any two of them, shall be binding and conclusive as to the amount of damages, upon both parties to this Policy; and if this Company or their Agent shall require such an examination or appraisement, it shall be so submitted, otherwise this Company will not be liable for any loss or damage under this Policy.

The expense of ascertaining and proving any loss that may occur, and also of forwarding such proofs to the office of the Company shall be paid by the party insured. And said Company shall in no case be deemed to have waived a full, literal and strict compliance with, and performance of each and every of the terms, provisions, conditions and stipulations in this Policy contained and hereto annexed, to be performed and observed by and on the part of the insured, and every person claiming by, through or under them, unless such waiver be express, and manifest in writing under the signature of the Secretary of said Company, before any failure on the part of the insured, or any one claiming by, through or under him, to comply with, and observe and perform the same, shall have occurred. And if any Agent of this Company, in the transaction of their business, shall assume to violate these conditions, such violations shall be construed to be the act of the insured, and shall render void this Policy.

And whenever required, the insured, or person claiming, shall produce and exhibit the books of account, bills of purchase, or duplicates thereof, and other vouchers, to the insurers or their Agent, at the office of this Company, in support of the claim, and leave them with this Company a sufficient length of time to permit extracts and copies thereof to be made.

And shall also, if required, submit to an examination, under oath, by the Agent or Attorney of this Company, and answer all questions touching his, her or their knowledge of any thing relating to such loss or damage, and subscribe and make oath to such examination, the same being reduced to writing. And until such proofs, examinations, declarations, certificates and exhibitions are produced, and permitted by the claimant, when required as above, the loss shall not be payable.

Any misrepresentation or concealment, fraud or false swearing, shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against this Company under the within Policy.

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

When premises have been on fire, or an attempt made by an incendiary to fire the same, assured must give immediate notice to this office, and on failure to do so this Policy will be void.

This Company shall not be liable for accidents accruing by fire occasioned by gas burners coming in contact with goods displayed in show windows, or any loss accruing therefrom.

12. Payment of losses shall be made at the end of sixty days after the loss shall have been ascertained and proved, and the aforesaid conditions fully complied with.

13. It is furthermore hereby expressly provided, that no suit or action of any kind against this 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 six months next after the cause of action shall have accrued.

14. Insurances once made may be continued for such further time as may be agreed upon, the premium required therefor being paid and endorsed on this Policy, or a receipt given for the same; and all insurances, original or renewed, shall be considered as made under the original representations, in so far as it may not be varied by new representations, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings, or by any change of interest or ownership. And should there, during the life of the Policy, an incumbrance fall, or be executed upon the property insured, sufficient to reduce the REAL interest of the insured in the same to a sum only equal to, or below the amount insured, or if it shall be levied upon or taken into possession or custody under an execution or other proceeding at law or equity, and the assured shall neglect or fail to obtain consent of the Company thereto, then and in that case the Policy shall be void.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre 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 Eleventh day) of April in the year of our Lord one thousand eight hundred and fifty nine and of the Independence of the said United States the Eighty-third

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

Carlos Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm L Church Clerk.

Be it remembered that heretofore to wit, on the twelfth day of March A.D. 1858. Samuel H. Cornick, Francis C. Cross and Robert C. Clark, for the use of Joseph V. Smedley, Plaintiffs, by James Clapp Esq. their attorney, sued out of the office of the Clerk of the Court aforesaid, and under the seal thereof, the People's certain writ of summons directed to the Sheriff of said county to execute, and clothed in the words and figures following, to wit—

State of Illinois }
County of Cook } ss.

The People of the State of Illinois to the Sheriff of said county—Greeting—

We command you that you summon The Howard Fire and Marine Insurance Company of Philadelphia, if it shall be found in your county

2

personally, to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House in Chicago, in said county, on the second Monday of April next, to answer unto Samuel A Conick, Francis C. Cross, and Robert B. Clark, in a plea of Covenant, to the damage of the said Plaintiffs, as is said, in the sum of Ten Thousand Dollars— And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same—

Seal

Witness William L. Church, Clerk of our said Court, and the Seal thereof, at Chicago aforesaid, this 12th day of March, A.D. 1858. Wm L. Church, Clerk—

And afterwards to wit, on the 12th day of March in the year last aforesaid, said writ was returned into the Court aforesaid by said Sheriff, endorsed as follows, to wit— Served by reading to the within named Defendants by Samuel T. Ellsworth, Agent of said Company, the 12th day of March, 1858. Fees— 1 Service, 50— 2 miles, 10— 1 Return, 10— 70— John L. Wilson, Sheriff, by George Anderson, Deputy—

And afterwards, to wit, on the 14th day of March, in the year aforesaid, the said Plaintiffs by their said Attorney, filed in the office of the Clerk of the Court aforesaid, their certain declaration in the words and figures following, to wit—

3

Cook County Circuit Court-

3 State of Illinois } ss.
Cook County- } ss.

Of April Term, 1858.

The Howard Fire and Marine Insurance Company of Philadelphia were summoned to answer unto Samuel A. Cornick, Francis C. Croft, and Robert C. Black trading under the firm name and style of Cornick, Cross & company, upon suit to and for the use of Joseph C. Snedley, of a plea of breach of covenant, and thereupon the said plaintiffs by James Blaine their attorney, complain. For that whereas the said firm of Cornick, Cross & company, on the twenty-sixth day of September A.D. 1857. were interested in a certain stock of merchandise contained in the Four story Brick Building with Metal roof and iron shutters in rear and sides, occupied by the said firm of Cornick, Cross & Co. as dealers in Hardware and cutlery and Rail Road and car furnishing materials, situate on the south side of South Water street, Nos 131 & 133. between Clark and Dearborn Streets in the city of Chicago, and county and state aforesaid, and so continued interested therein until the destruction of said building and contents by fire as hereinafter mentioned, and the said defendants on the same day and year aforesaid, in consideration of a premium in money then and

there paid to them by the said firm of Comick Cross & Co. made a policy of insurance, sealed with the seal of the said defendants, which said policy the said plaintiffs now bring here into court upon the said stock of Merchandise and thereby promised the said firm of Comick, Cross & Co. to insure Five thousand Dollars thereon, from the twenty-sixth day of September A D. 1857. (at 12 Oclock at noon) until the twenty sixth day of September A D. 1858. (at 12 O'clock at noon) against all such immediate loss or damage as should happen to said Stock of Merchandise by fire other than fire happening by means of any invasion, insurrection riot or civil commotion, or any military or usurped power, or the bursting or explosion of any Steam Boiler or flues of any steam engine, to the amount aforesaid, to be paid to the said firm of Comick, Cross & Co. in sixty days after notice and proof of the same, upon the condition that the said firm of Comick, Cross & Company, in case of such loss, should forthwith give notice thereof to the said Company, and as soon thereafter as possible, should deliver in a Schedule or list of articles destroyed or damaged, stating who were the owners thereof, that at the time of and and immediately before the fire, the subject insured was in, upon, or at the place or location

specified in the Policy, and covered thereby, and that same was destroyed or damaged (as the case may be) by fire, under their hands and verified by their oaths or affirmations, declaring the said account to be just and true, and if required, should produce their books of account, and other proper vouchers - and should declare on oath whether any, and what other insurance was made upon said stock of Merchandise, and what was the whole cash value of the subject insured, what was their interest therein, and in what general manner the building insured, or containing the subject insured, was occupied, and who were the occupants of such building, and when and how the fire originated so far as they knew or believed, or had any information - And the plaintiffs aver that afterwards, and before the expiration of the time limited in said policy, to wit - on the nineteenth day of October A.D. 1857. the said stock of merchandise was accidentally and by misfortune totally consumed by fire, of which loss the said firm of Comick, Cross & Co. forthwith gave notice to said defendants, and as soon as possible thereafter, to wit, on the 26th day of October, A.D. 1857. delivered to them, the said defendants, a schedule or list of articles destroyed or damaged, stating who was the owner of said

property, that at the time of and immediately before the fire the subject insured was in, upon, or at the place or location specified, and that the same was damaged or destroyed by fire, under their hands and verified by the oath of one of the said firm, and did at the same time declare on oath that the said account was just and true, and that no other insurance was made on said property except an additional insurance of Five Thousand Dollars in the said Howard Fire and Marine Insurance Company of Philadelphia by Policy dated the 28th day of August A.D. 1857. and also the sum of Two thousand Dollars in the Merchants Insurance Company of Philadelphia, Five thousand Dollars in the Astor Insurance Company of New York, Five thousand in the Atlantic Insurance Company of Brooklyn, Five thousand in the Metropolitan Insurance Company of New York, and Five thousand Dollars in the Liverpool and London Insurance Company of all which said insurances the said defendant then and there had notice according to the provisions of said policy, and the said plaintiffs did further declare on oath what was the whole cash value of the subject insured, what was their interest therein, and in what general manner the building insured or containing the subject insured, was occupied, and who were

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the occupants of such building, and when and how the fire originated as far as they knew or believed, or had any information - and although they the said plaintiffs, have in all things conformed themselves to, and observed all and singular the said articles, conditions, stipulations, matters and things which on their part and behalf were to be observed and performed according to the form and effect of the said deed or policy of Insurance - Yet although requested, and though sixty days after such notice and proof of said loss have elapsed, the said defendants have never paid the said sum aforesaid to the said plaintiffs, or any part thereof, but to pay the same, according to the form and effect of the said deed or policy of insurance in that behalf made as aforesaid; to wit, at the said city and county aforesaid, have hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiffs of Five thousand Dollars, and therefore they bring suit -

James Clapp - Atty for Plffs -

The Howard

Fire and Marine

Insurance Company

Franklin Buildings No 94. Walnut Street

$5.000 No 14.

By this Policy, the Howard Fire and Marine Insurance Company of Philadelphia -

In consideration of Sixty two 50/100 Dollars, the receipt whereof is hereby acknowledged, Do Insure Cornick, Cross & Co. of Chicago, Illinois, against loss or damage by fire, to the amount of Five thousand Dollars, on the following property, as described in Application and Survey, No Fourteen, which is hereby declared to be a part of this Policy, and a Warranty on the part of the Assured, viz— On Merchandise, Hazardous and not Hazardous, contained in the Five Story Brick Building with metal roof and iron Shutters in rear and sides, occupied by the assured as Dealers in Hardware, Cutlery, and Rail Road and Car Furnishing materials, situate on the South Side of South Water Street Nos 131 & 133. between Clark & Dearborn Streets— other Insurance permitted without notice until required—

And the said Company do hereby promise and agree to make good unto the said assured, their Executors, Administrators and Assigns, all such immediate loss or damage, not exceeding the amount hereby insured, nor three fourths of the appraised cash value of any building above the foundation, destroyed or damaged, as shall happen by fire to the property as above specified, from the twenty sixth day of September, one thousand eight hundred and fifty seven, (at 12 o'clock at noon) unto the twenty sixth day of September, one thousand, eight hundred and fifty eight, (at 12 o'clock

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at noon) the said loss or damage to be estimated at a sum not exceeding, in any case, the price paid therefor, by the party hereby insured, nor above the actual cash value thereof, at the time the same shall happen, and to be paid within sixty days after notice, proof and adjustment thereof, in conformity to the conditions annexed to this Policy, unless the said Insurance Company shall within thirty days after the proof of such loss or damage, give directions for rebuilding, or repairing, or if Merchandise, or personal property, restoring the same, as before the fire— And in case any difference shall arise touching such loss or damage, or the relative condition or value of said property, when rebuilt, repaired or restored, the Company may require it to be submitted to the judgment of arbitrators, chosen in accordance with the 10th & 11th Article of Conditions annexed to this Policy, whose award in writing shall be binding on both parties— Provided always, and it is hereby declared, that this Company shall not be liable to make good any loss by theft, or property stolen— nor for any loss or damage caused by the bursting or explosion of any steam boiler, or flues of any steam engine— nor for any loss or damage caused by the bursting or explosion arising from any other cause, or any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or by any earth-

quake or hurricane— And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this Company, and mentioned in or endorsed upon this Policy, then this insurance shall be void and of no effect— and the assured hereby covenants and engages that the representation given in the application for this insurance, is a warranty on the part of the insured, and contains a just, full and true exposition of all the facts and circumstances in regard to the condition, situation and value of the property insured, and that if any fact or circumstance shall not have been fairly represented— or if the said Assured or their Assigns shall hereafter make any other insurance on the same property, and shall not give immediate notice thereof to the Secretary, and have the same endorsed on this instrument, or otherwise acknowledged by him in writing, then this Policy shall cease and be of no effect— The interest of the assured in this Policy, or in the property insured thereby, is not assignable, unless by consent of the Company, manifested in writing, and in case of any transfer or termination of such interest, or any part thereof, either by sale or otherwise, whether prior or subsequent to any loss or damage, without such consent, this policy shall henceforth be void, and of no effect— And in case of any other insurance

upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this Company any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property - without reference to the solveney, liability or responsibility of other Companie insuring thereon - and whenever this Company shal pay any loss, the assured agrees to assign over all his right, to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor at the charge and for account of the Company if requested - Camphene, spirit gas, or "burning fluid", when used in stores or warehouses as a light, subjects the goods therein to an additional charge - and permission for such use must be endorsed in writing on the policy - Gunpowder is expressly prohibited from being deposited, stored, or kept in any building insured, containing any goods or merchandise insured by this Policy, unless by special consent in writing on the policy - And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned building shall at any time after the making and during the continuance of this Insurance be appropriated, applied or used, to or for the purpose of carrying on, or exercising therein any trade, business or vocation, which

would in any way increase the risk, or rates of insurance, or for the purpose of storing, keeping, or vending therein, any articles, goods or merchandise, other than of the kind, and description, mentioned in the application, and this policy—unless otherwise specially provided for, or hereafter agreed to, by this Company in writing, and added to, or endorsed upon this Policy—then and from thence forth, these presents shall cease and be of no force or effect—And it is moreover declared, that this insurance is not intended to apply to, or to cover any books of account, written securities, deeds, or other evidences of titles to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion, jewelry, musical instruments, or spirituous liquors—It is also declared that this Policy is made and accepted in reference to the written and printed application whereon it is issued, and also, to the conditions hereto annexed, which are hereby made a part of this Policy, and to be used and resorted to, in order to explain the rights and obligations of the parties hereto, in all cases, not herein otherwise specially provided for—And it is also agreed and declared, by the parties aforesaid, that no condition, stipulation, covenant or clause herein before contained, shall be altered, annulled or waived, or any clause added to these presents, except by writing endorsed hereon, or annexed hereto, by the President or Secretary, with

Countersigned at Chicago Illinois, this Twenty-sixth day of September 1857.
Ellsworth & Wadsworth
Agents

their signatures affixed thereto—

Not valid until Countersigned by Ellsworth & Wadsworth— Agents—

Seal

In witness whereof, the Common Seal of said Corporation is hereunto affixed this Twenty sixth day of September, in the year of our Lord, one thousand, eight hundred and fifty seven—

Percival M. Otis, President—

C. E. Spangler Vice President—

Wm H. Woods— Secy—

B. J. Kensil, Treas—

Conditions of Insurance—

Persons desirous of making insurance, are to furnish the Secretary or Agent of the Company with the following information—

1— Of what material the walls and roof of each Building are constructed, as well as the construction of the Buildings within fifty feet contiguious thereto—

2— Whether the same are occupied as private dwellings, or otherwise—

3— Where situated, and how many stories high—

Each Building must be seperately insured— and in like manner a seperate sum insured on the property contained therein—

4— In the Insurance of Goods, Wares or Merchandise the Building or place in which the same are depos-

stored or deposited, is to be described – also whether such goods are of the kind denominated hazardous or extra hazardous, and whether any manufacturing is carried on in the premises – And if any person shall insure his or their building or goods, and shall cause the same to be described in the Policy otherwise than as they really are, such insurance shall be void and of no effect – or if, after the insurance is effected, either by an original policy or by the renewal thereof, the risk shall be increased by the erection of buildings, or by the use or occupation of the neighboring premises, or by any means whatsoever, it shall be the duty of the assured to give immediate notice thereof, to this Company, pay such additional premium as they shall determine, and obtain their written consent to the continuation of this Policy – otherwise it shall be void –

And if, at any time, the Company shall so elect, it shall be optional with the Company to terminate the Insurance, after notice given to the insured, or his representative, of their intention to do so – in which case the Company shall refund a rateable proportion of the premium –

Any Building insured by this Company becoming vacant or tenantless for a period of thirty days, notice thereof must be immediately given to the Secretary and his consent obtained thereto in writing,

otherwise this Policy shall be void—

5— Property held in trust, or on commission, must be insured as such, otherwise the Policy will not cover such property— and in case of loss, the name of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein— Goods on storage must be seperately and specifically insured— If the interest in the property to be insured be a leasehold or other interest, not absolute, it must be so stated in the Policy, otherwise it shall be void—

6— No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium— or if the premium named in this Policy, or any obligation which may be given for such insurance, or any part of it, remains unpaid, or the conditions of such obligation are not fully complied with, this Policy shall be void and of no effect—

7— The interest of the insured in this Policy is not assignable, unless the assent of this Corporation be first obtained— notice of such assignment shall be given, before any loss may have happened, and this Company when so noticed, may elect either to continue the insurance, and express the same by endorsement on this Policy, or refund a ratable portion of the premium, for the time of the risk unexpired, and cancel the Policy—

8— Notice of all other insurances, whether prior or subsequent to the date of this Policy, must be given the Company, and their consent thereto ~~to~~ endorsed upon this instrument, or otherwise acknowledged in writing, otherwise this Policy shall be of no effect—

9— 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 fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect— And it is mutually understood and agreed that there can be no abandonment to the insurers of the subject insured— and also that this Company or their Agent have the right to examine and take account of the property saved, and that every facility be given to enable them to do so—

If no notice of a loss is given within thirty days from the time when it happened, it shall be discretionary with the Directors to reject or allow the claim, or any part thereof— And no repairs in the premises shall be made after a fire, until notice is given to the Company, and they have had an opportunity to view and examine—

10— Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing, to the

Company— And as soon thereafter as possible, they shall deliver to this Company a schedule or list of articles destroyed or damaged, stating who are the owners thereof— that at the time of, and immediately before the fire, the subject insured was in, upon or at the place or location specified in the Policy, and covered thereby, and that the same was either destroyed, or damaged (as the case may be) by fire— 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 insurances have been made on the same property— what was the whole cash value of the subject insured, at the time of such loss, 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, and who were the occupants of such building, and when and how the fire originated, so far as they know or believe, or have any information— When merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as possible, assorting and arranging the various articles according to their kinds— and cause a list or inventory of the whole to be made— the damage shall then be ascertained by the examination and appraisal

of each article by two disinterested appraisers, under oath, one chosen by the Company, and one by the insured, and in case of their disagreement, they shall nominate a third person to act as umpire between them - and the award in writing, under the hands of such appraisers, or any two of them, shall be binding and conclusive as to the amount of damages upon both parties to this Policy - and if this Company or their Agent shall require such an examination or appraisement, it shall be so submitted, otherwise this Company will not be liable for any loss or damage under this Policy -

The expense of ascertaining and proving any loss that may occur, and also of forwarding such proofs to the office of the Company, shall be paid by the party insured - And said Company shall in no case be deemed to have waived a full, literal and strict compliance with, and performance of, each and every of the terms, provisions, conditions and stipulations in this Policy contained and hereto annexed, to be performed and observed by, and on the part of the insured, and every person claiming by, through or under them, unless such waiver be express, and manifest in writing under the signature of the Secretary of said Company before any failure on the part of the insured, or any one claiming by, through or under him, to comply with

and observe and perform the same, shall have occured— And if any Agent of this Company, in the transaction of their business, shall assume to violate these conditions, such violations shall be construed to be the act of insured, and shall render void this Policy—

And whenever required, the insured, or person claiming, shall produce and exhibit the books of account, bills of purchase, or duplicates thereof, and and other vouchers, to the insurers or their Agent, at the office of this Company, in support of the claim, and leave them with this Company, a sufficient length of time to permit extracts and copies thereof to be made—

And shall also, if required, submit to an examination, under oath, by the Agent or Attorney of this Company, and answer all questions touching his, her or their knowledge of anything relating to such loss or damage, and subscribe and make oath to such examination, the same being reduced to writing— And until such proofs, examinations, declarations, certificates and exhibitions are produced, and permitted by the claimant, when required as above, the loss shall not be payable—

Any misrepresentation or concealment, fraud or false swearing, shall cause a forfeiture of all claim on the insurers, and shall be a full bar to all remedies against this Company under the with

in Policy—

11— In case of any loss or damage to the property insured, it shall be optional with the Company to replace the articles lost or damaged with others of the same kind and equal goodness, and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do, within sixty days after having received the preliminary proofs of loss, required by these conditions. When premises have been on fire, or an attempt made by an incendiary to fire the same, assured must give immediate notice to this office, and on failure to do so, this Policy will be void—

This Company shall not be liable for accidents accruing by fire occasioned by gas burners coming in contact with goods displayed in shop windows, or any loss accruing therefrom—

12— Payment of losses shall be made at the end of sixty days after the loss shall have been ascertained and proved, and the aforesaid conditions fully complied with—

13— It is furthermore hereby expressly provided, that no suit or action of any kind against this 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 six months next after the cause of action shall have accrued—

14— Insurances once made, may be continued for such further time as may be agreed upon, the premium required therefore being paid and endorsed on this Policy, or a receipt given for the same— and all insurances, original or renewed, shall be considered as made under the original representations, in so far as it may not be varied by new representations, which in all cases, it shall be incumbent on the party insured, to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings, or by any change of interest or ownership— And should there, during the life of the Policy, an incumbrance fall, or be executed upon the property insured, sufficient to reduce the Real interest of the insured in the same, to a sum only equal to, or below the amount insured, or if it shall be levied upon, or taken into possession or custody under an execution or other proceeding at law or equity, and the assured shall neglect or fail to obtain consent of the Company thereto, then and in that case, the Policy shall be void—

And afterwards to wit, at the April term of said Court, to wit, on the 14th day of April, in the year aforesaid, the following proceedings among others, were had and entered of record in said Court to-wit—

Samuel W. Cornick, Francis C. Cros, & Robert C. Clarkyuse &c.
vs
Howard Marine & Fire Insurance } Covenant.

12892

Ordered that the rule to plead be extended in the above cause until monday next.

And afterwards, to wit, on the 19th day of April, in the year last aforesaid, the said defendant by E. A & J. Van Buren its attorneys, filed in the Court aforesaid, in said cause, its certain pleas in the words and figures following, to wit.

Cook County Circuit Court.

The Howard Fire & Marine Insurance Company of Philadelphia.
ads
Samuel Cornick, Francis C. Cros, & Robert C. Clark

And the said defendants, by E. A & J. Van Buren their attorneys, come and defend the wrong and injury, when &c. and crave oyer of the Policy of Insurance, in the Plaintiffs declaration mentioned, and it is read to them, and they also crave oyer of the conditions upon which the company make Insurance. And they also crave oyer of the application of the said plaintiffs for such Insurance, which conditions and application are referred to by said Policy of Insurance, and form

a part thereof, and they are read to them, in these words, that is to say-

"

No 14-

Application of Cornick, Cross & Co. of Chicago, Illinois- To the

Howard Fire and Marine Insurance Company

Franklin Buildings No 94 Walnut Street-

For Insurance

Against loss or damage by Fire to the amount of $5000. For 1 year from the 26th day of September 1857. to the 26th day of September, 1858. in the following property- each Building, or stock therein to be seperately insured-

On Merchandise Hazardous and not Hazardous contained in the Five Story Brick building with metal roof and Iron shutters in rear and sides occupied by the assured as dealers in Hardware, cutlery, Rail Road and car furnishing materials, situate on South side of South Water street, Nos 131 & 133, between Clark & Dearborn streets

Amount $5000 Rate 1¼ % Prem $62 50/100

This Company is not to be held liable for any loss or damage by Fire caused by Locomotive Engines

Note- In all applications for Insurance on Grist or Flouring Mills, state number of runs of stones- And in Tanneries, whether with or without heaters- Also in saw mills, how many saws, and in all cases the moving Power in, or

within 50 feet of the premises to be insured—

Survey—

It is expressly agreed to on the part of the Applicant that this survey, as well as the diagram of the premises herewith, shall form part and be a condition of this Insurance

Town or city—Name of Street And number	Chicago—South Water street Nos 1818 133—
1—Building—Is it stone, Brick, or wood?	Brick—
how many stories high—5.	
2—Walls—Party or Division	
Are they Brick—	Yes—
Are they entire— Yes.	
how high above the roof—	10 inches—
3—Roof—What is it covered with.	Composition—
4—Stoves—If used, how many.	3.
What is under them	Zincs.
5—Pipe—is it in good order—	yes.
6. Ashes—how are they disposed of—	in street—
7—For what purpose is the building used—	Wholesale & retail Hardware &c.
How many tenants—	one
8—Distance of other Buildings within 50 feet—	connected

Of what materials built- Brick-
How occupied — Wholesale Stores-
9- Is there steam power used in, or within 50 feet of premises to be insured- no-
10- State whether any other and what Insurance is effected on the property now to be insured — $22.000
11- State fully the Applicants interest in the property insured- whether owner, mortgagee, Lessee &c. and whether encumbered, and how- Owners, and not encumbered
12- Have you ever been burnt out, or damaged by fire- No-
If so, were you insured-
13- Are there any other or material facts or circumstances relative to this risk, which this company ought to be made aware of- None-
If so, state them-

L. L. Ellsworth Surveyor- Cornick, Cross & Co. Applicant
Surveyor will give an exact copy of the body of the Policy- Five thousand dollars on merchandise hazardous and not Hazardous- contained in the Five Story Brick building with metal roof, and Iron

shutters in rear and sides, occupied by the Assured as dealers in Hardware, Cutlery, Rail Road and Car furnishing materials, situate on South side of South Water Street, Nos 131 & 133. between Clark and Dearborn streets, Chicago, Illinois—

Policy of Insurance.

The Howard Fire and Marine Insurance Company Franklin Buildings, No 94 Walnut Street $5000. No 14—

By this Policy, The Howard Fire and marine Insurance Company of Philadelphia—

In consideration of Sixty-two 50/100 dollars the receipt whereof is hereby acknowledged, do insure Cornick, Cross & Co. of Chicago, Illinois, against loss or damage by fire, to the amount of five thousand dollars, on the following property as described in application and survey, No. fourteen, which is hereby declared to be a part of this Policy, and a Warranty on the part of the assured, viz— On Merchandise Hazardous and not Hazardous, contained in the Five story Brick Building with metal roof and Iron shutters in rear and side occupied by the assured as dealers in Hardware, Cutlery, and Rail Road and Car furnishing materials, situate on the South side of South Water Street, Nos. 131 & 133. between Clark and Dearborn Streets

Other Insurance permitted without notice until required. And the said Company do hereby promise and agree to make good unto the said assured, their Executors,

Administrators and assigns, all such immediate loss or damage not exceeding the amount hereby insured, nor three-fourths of the appraised cash value of any building above the foundations, destroyed or damaged, as shall happen by fire to the property as above specified, from the twenty sixth day of September, One thousand, eight hundred and fifty seven (at 12 O' clock at noon) unto the twenty-sixth day of September, One thousand, eight hundred and fifty eight (at 12 O'clock at noon). the said loss or damage to be estimated at a sum not exceeding in any case the price paid therefor, by the party hereby insured, nor above the actual cash value thereof, at the time the same shall happen, and to be paid within sixty days after notice, proof and adjustment thereof, in conformity to the conditions annexed to this policy, unless the said Insurance Company shall within thirty days after the proof of such loss or damage, give directions for rebuilding or repairing, or if merchandise or personal property, restoring the same as before the fire- And in case any difference shall arise, touching such loss or damage, or the relative condition or value of said property, when rebuilt, repaired or restored, the Company may require it to be submitted to the judgment of arbitrators chosen in accordance with the 10th article of conditions annexed to this Policy, whose award in writing shall be binding on both parties- Provided always, and it is hereby declared

that this Company shall not be liable to make good any loss by theft, or property stolen – nor for any loss or damage caused by the bursting or explosion of any steam boiler, or flues of any steam engine, nor for any loss or damage caused by the bursting or explosion arising from any other cause, or any loss or damage by fire, which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or by any earthquake or hurricane –

And provided further that in case the assured shall have already any other insurance against loss by fire, on the property hereby insured, not notified to this Company, and mentioned in or endorsed upon this Policy, then this Insurance shall be void and of no effect – and the assured hereby covenants and engages that the representation given in the application for this insurance, is a warranty on the part of the insured, and contains a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, and value of the property insured, and that if any fact or circumstance shall not have been fairly represented, or if the said Assured, or their Assigns, shall hereafter make any other insurance on the same property and shall not give immediate notice thereof to the Secretary, and have the same endorsed on this instrument, or otherwise acknowledged by him in writing, then this

Policy shall cease and be of no effect. The interest of the assured in this Policy, or in the property insured thereby, is not assignable, unless by consent of the Company manifested in writing, and in case of any transfer or termination of such interest, or any part thereof, either by sale or otherwise, whether prior or subsequent to any loss or damage, without such consent this Policy shall henceforth be void and of no effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not in case of loss or damage, be entitled to demand or recover of this Company, any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured, on the said property, without reference to the solvency, liability, or responsibility of other Companies insuring thereon. And whenever this Company shall pay any loss, the assured agrees to sign over all his right to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor, at the charge and for account of the Company, if requested. Camphene, Spirit Gas, or "Burning Fluid," when used in stores or warehouses as a light, subjects the goods insured to an additional charge, and permission for such use must be endorsed in writing on the policy. Gunpowder is expressly prohibited from being deposited, stored or kept in any

building insured, containing any goods or merchandise insured by this policy, unless by special consent in writing on the policy— And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned building shall at any time after the making, and during the continuance of this Insurance, be appropriated, applied or used to, or for the purpose of carrying on, or exercising therein any trade, business or occation which would in any way increase the risk or rates of Insurance, or for the purpose of storing, keeping or vending therein, any articles, goods or merchandise other than of the kind and description mentioned in the Application and this Policy, unless otherwise specially provided for, or hereafter agreed to, by this Company in writing, and 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 declared that this insurance is not intended to apply to or to cover any books of account, written securities, deeds or other evidences of titles to lands, nor to bonds, bills, notes or other evidences of debt, nor to money or bullion, jewelry, musical instruments or spirituous liquors— It is also declared that this Policy is made and accepted in reference to the written and printed application thereon it is insured, and also to the conditions hereto annexed, which are hereby made a part of this Policy, and to be used and resorted to in order to explain

countersigned at Chicago Illinois this seventh day of September, 1857. Ellsworth & Wadsworth Agents.

the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for— And it is also agreed and declared by the parties aforesaid, that no condition, stipulation, covenant or clause hereinbefore contained, shall be altered, annulled or waived, or any clause added to these presents, except by writing endorsed hereon, or annexed hereto, by the President or Secretary, with their signatures affixed thereto—

Not valid until countersigned by Ellsworth and Wadsworth Agents—

In witness whereof the common seal of said Corporation is hereto affixed, this seventh day of September, in the year of our Lord, One thousand, eight hundred and fifty seven—

Wm H. Woods— Secretary— Percival M. Potts— President—

R. J. Hersil— Treasurer— C. E. Spangler Vice President—

Conditions of Insurance—

Persons desirous of making insurance, are to furnish the Secretary or Agent of the Company with the following information—

1— Of what material the walls and roof of each Building are constructed, as well as the construction of the Buildings within fifty feet contiguous thereto—

2— Whether the same are occupied as private dwellings, or how otherwise—

3— Where situated, and how many stories high—

Each Building must be seperately insured— and

in like manner a seperate sum insured on the property contained therein—

4— In the insurance of Goods, Wares or Merchandise, the Building or place in which the same are stored or deposited, is to be described— also whether such Goods are of the kind denominated hazardous or extra hazardous, and whether any manufacturing is carried on in the premises— And if any person shall insure his or their building or goods, and shall cause the same to be described in the Policy otherwise than as they really are, such insurance shall be void and of no effect— or if, after the insurance is effected, either by an original policy or by the renewal thereof, the risk shall be increased by the erection of buildings, or by the use or occupation of the neighboring premises, or by any means whatsoever, it shall be the duty of the assured to give immediate notice thereof to this Company, pay such additional premium as they shall determine, and obtain their written consent to the continuation of this Policy— otherwise it shall be void—

And if, at any time, the Company shall so elect, it shall be optional with the Company to terminate the insurance, after notice given to the insured, or his representatives, of their intention to do so— in which case the Company shall refund a rateable proportion of the premium—

Any building insured by this Company, becoming vacant or tenantless for a period of thirty days, notice thereof must be immediately given to the Secretary, and his

in like manner a seperate sum insured on the property contained therein—

4— In the insurance of Goods, Wares or Merchandise, the Building or place in which the same are stored or deposited, is to be described— also whether such Goods are of the kind denominated hazardous or extra hazardous, and whether any manufacturing is carried on in the premises— And if any person shall insure his or their building or goods, and shall cause the same to be described in the Policy otherwise than as they really are, such insurance shall be void and of no effect— or if, after the insurance is effected, either by an original policy or by the renewal thereof, the risk shall be increased by the erection of buildings, or by the use or occupation of the neighboring premises, or by any means whatsoever, it shall be the duty of the assured to give immediate notice thereof to this Company, pay such additional premium as they shall determine, and obtain their written consent to the continuation of this Policy— otherwise it shall be void—

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Any building insured by this Company, becoming vacant or tenantless for a period of thirty days, notice thereof must be immediately given to the Secretary, and his

consent thereto obtained in writing, otherwise this Policy shall be void—

5— Property held in trust or on commission, must be insured as such, otherwise the Policy will not cover such property— and in case of loss, the name of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interest therein— Goods on storage must be seperately and specifically insured— If the interest in the property to be insured be a leasehold or other interest, not absolute, it must be so stated in the Policy, otherwise it shall be void—

6— No insurance, whether original or continued, shall be considered as binding, until the actual payment of the premium— or if the Premium named in this policy, or any obligation which may be given for such insurance, or any part of it remains unpaid, or the conditions of such obligation are not fully complied with, this Policy shall be void, and of no effect.

7— The interest of the insured in this Policy, is not assignable, unless the assent of this Corporation be first obtained— notice of such assignment shall be given, before any loss may have happened; and this Company, when so notified, may elect either to continue the insurance, and express the same by endorsement on this Policy, or refund a rateable portion of the premium, for the time of the risk unexpired, and cancel the Policy—

8– Notice of all other insurances, whether prior or subsequent to the date of this Policy, must be given the Company, and their consent thereto endorsed upon this instrument, or otherwise acknowledged in writing, otherwise this Policy shall be of no effect–

9– 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 fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect– And it is mutually understood and agreed that there can be no abandonment to the insurers of the subject insured– and also that this Company or their agent have the right to examine and take account of the property saved, and that every facility be given to enable them to do so–

If no notice of a loss is given within thirty days from the time when it happened, it shall be discretionary with the Directors to reject or allow the claim or any part thereof– And no repairs in the premises shall be made after a fire, until notice is given to the Company, and they have had an opportunity to view and examine–

10– Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing to the Company And as soon thereafter as possible, they shall deliver to this Company a schedule or list of articles

8– Notice of all other insurances, whether prior or subsequent to the date of this Policy, must be given the Company, and their consent thereto endorsed upon this instrument, or otherwise acknowledged in writing, otherwise this Policy shall be of no effect–

9– 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 fail to do so, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect– And it is mutually understood and agreed that there can be no abandonment to the insurers of the subject insured– and also that this Company or their agent have the right to examine and take account of the property saved, and that every facility be given to enable them to do so–

If no notice of a loss is given within thirty days from the time when it happened, it shall be discretionary with the Directors to reject or allow the claim or any part thereof– And no repairs in the premises shall be made after a fire, until notice is given to the Company, and they have had an opportunity to view and examine–

10– Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing to the Company And as soon thereafter as possible, they shall deliver to this Company a schedule or list of articles

destroyed or damaged, stating who are the owners thereof - that at the time of, and immediately before the fire, the subject insured was in, upon, or at the place or location specified in the Policy, and covered thereby, and that the same was either destroyed, or damaged (as the case may be) by fire - 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 insurances have been made on the same property - what was the whole cash value of the subject insured, at the time of such loss, 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; and who were the occupants of such building and when and how the fire originated, so far as they know or believe, or have any information - When merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as possible, assorting and arranging the various articles, according to their kinds and cause a list or inventory of the whole to be made - The damage shall then be ascertained by the examination and appraisal of each article by two disinterested appraisers, under oath, one chosen by the Company, and one by the insured, and in case of

destroyed or damaged, stating who are the owners thereof - that at the time of, and immediately before the fire, the subject insured was in, upon, or at the place or location specified in the Policy, and covered thereby, and that the same was either destroyed, or damaged (as the case may be) by fire - 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 insurances have been made on the same property - what was the whole cash value of the subject insured, at the time of such loss, 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; and who were the occupants of such building and when and how the fire originated, so far as they know or believe, or have any information - When merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as possible, assorting and arranging the various articles, according to their kinds and cause a list or inventory of the whole to be made - The damage shall then be ascertained by the examination and appraisal of each article by two disinterested appraisers, under oath, one chosen by the Company, and one by the insured, and in case of

their disagreement, they shall nominate a third person to act as umpire between them - and the award in writing, under the hands of such appraisers, or any two of them, shall be binding and conclusive as to the amount of damages upon both parties to this policy - and if this Company or their Agent shall require such an examination or appraisement, it shall be so submitted, otherwise this Company will not be liable for any loss or damage under this Policy -

The expense of ascertaining and proving any loss that may occur, and also of forwarding such proofs to the office of the Company, shall be paid by the party insured - And said Company shall in no case, be deemed to have waived a full, literal and strict compliance with, and performance of each and every of the terms, provisions, conditions and stipulations in this Policy contained, and hereto annexed, to be performed and observed by, and on the part of the insured, and every person claiming by, through or under them, unless such waiver be express and manifest in writing under the signature of the Secretary of said Company, before any failure on the part of the insured, or any one claiming by, through or under him, to comply with, and observe and perform the same, shall have occurred - And if any Agent of this Company, in the transaction of their business, shall assume to violate these conditions, such violations shall be construed to be the act of insured, and shall render void this

Policy—

And whenever required, the insured, or person claiming, shall produce and exhibit the books of account, bills of purchase, or duplicates thereof, and other vouchers, to the insurers or their Agent, at the office of this Company, in support of the claim, and leave them with the Company, a sufficient length of time to permit extracts and copies thereof to be made—

And shall also if required, submit to an examination under oath, by the Agent or Attorney of this Company, and answer all questions touching his, her, or their knowledge of anything relating to such loss or damage, and subscribe and make oath to such examination, the same being reduced to writing— And until such proofs, examinations, declarations, certificates and exhibitions are produced, and permitted by the claimant, when required as above, the loss shall not be payable—

Any misrepresentation or concealment, fraud or false swearing, shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against this Company, under the within Policy.

11— In case of any loss or damage to the property insured, it shall be optional with the Company to replace the articles lost or damaged with others of the same kind and equal goodness, and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do, within sixty

days after having received the preliminary proofs of loss required by these conditions—

When premises have been on fire, or an attempt made by an incendiary to fire the same, assured must give immediate notice to this office, and on failure to do so, this Policy will be void—

This Company shall not be liable for accidents accruing by fire occasioned by gas burners coming in contact with goods displayed in shop windows, or any loss accruing therefrom—

12— Payment of losses shall be made at the end of sixty days after the loss shall have been ascertained and proved, and the aforesaid conditions fully complied with—

13— It is furthermore hereby expressly provided, that no suit or action of any kind against this 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 six months next after the cause of action shall have accrued—

14— Insurance once made, may be continued for such further time as may be agreed upon, the premium required therefor being paid and endorsed on this Policy, or a receipt given for the same— and all insurances original or renewed, shall be considered as made under the original representations, in so far as it may not be varied by new representations, which in

and upon which the same was issued, but the same was entirely and falsely represented, and warranted, and otherwise than they really were, so as to cause the goods to be effected at a lower premium than ought to have been, contrary to the form and effect of the said Policy, and the said condition referred to by said Policy and endorsed them. And this the defendants are ready to verify, wherefore they pray judgment, if the said Plaintiffs ought to have or maintain their aforesaid action thereof against them &c.

And for a further Plea in this behalf the said defendants by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided, say, that the Plaintiffs ought not to have or maintain their said action against them, because they say - That the purpose for which the building, in which the said goods insured were deposited was used, was not correctly or truly represented and warranted in the said Policy, and Application and survey, and the same was used for other and different purposes than represented - and the purpose for which the building was used, was represented and warranted to be used, in the said application and survey, which formed a part of the Policy, otherwise than they really were so as to cause the said Insurance to be effected at a lower premium than they ought to have been,

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contrary to the form and effect of the said Policy, and the said conditions referred to in the said Policy, and are endorsed therein, and this the said defendants are ready to verify, wherefore they pray judgment if the said plaintiffs ought to have or maintain their said action against them &c.

And for a further plea in this behalf, the said defendants by leave of the Court here for this purpose first had and obtained, according to the Statute in such case made and provided, say, the Plaintiffs ought not to have or maintain their said action against them, because they say that at the time of the issuing of said Policy, the said Plaintiffs by their said application and survey, and which forms a part of said Policy, represented and warranted that there was but one tenant in the Building in which the said Goods so insured as aforesaid were deposited. Yet the said defendants say that after the issuing of said Policy, to wit, on or about the first day of October, 1857. to wit, at Chicago aforesaid, the said Plaintiffs caused or permitted other tenants to occupy said Building, or a portion thereof, so as to increase the risk and danger of said goods so insured as aforesaid, contrary to the form and effect of said Policy and said warranty and the conditions referred to in the said Policy, and endorsed therein. And this the said defendants are ready to verify, wherefore they pray judgment if the said Plaintiffs ought to have or maintain their afore

said action thereof against them &c-
And for a further Plea in this behalf, the said defendants by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided, say that the said plaintiffs ought not further to have or maintain their said action, because they say that before and at the time of the issuing of the said Policy by the said defendants, the said plaintiffs by their said application and survey, upon which said Policy was issued, and which form a part thereof, the said Plaintiffs represented and warranted that the said Building in which the said Goods insured as aforesaid were deposited, contained only one tenant- nevertheless the said Plaintiffs afterwards to wit, on or about the first day of October 1857. caused or permitted several other tenants, and more than one, to wit, twenty tenants to occupy said building- thereby altering the terms and conditions without the consent of said plaintiffs, as stated and contained in said Policy- contrary to the form and effect of the said Policy, and the conditions therein endorsed and refered to, and this the ~~said~~ defendants are ready to aver, wherefore they pray judgment if the said plaintiffs ought to have or maintain their said action &.
And for a further plea in this behalf ~~in this behalf~~ the said defendants, by leave of the Court here

said action thereof against them &c-
And for a further Plea in this behalf, the said defendants by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided, say that the said plaintiffs ought not further to have or maintain their said action, because they say that before and at the time of the issuing of the said Policy by the said defendants, the said plaintiffs by their said application and survey, upon which said Policy was issued, and which form a part thereof, the said Plaintiffs represented and warranted that the said Building in which the said Goods insured as aforesaid were deposited, contained only one tenant- nevertheless the said Plaintiffs afterwards to wit, on or about the first day of October 1857. caused or permitted several other tenants, and more than one, to wit, twenty tenants to occupy said building- thereby altering the terms and conditions without the consent of said plaintiffs, as stated and contained in said Policy- contrary to the form and effect of the said Policy, and the conditions therein endorsed and refered to, and this the ~~said~~ defendants are ready to aver, wherefore they pray judgment if the said plaintiffs ought to have or maintain their said action &.
And for a further plea in this behalf ~~in this behalf~~ the said defendants, by leave of the Court here

for this purpose first had and obtained, according to the Statute in such case made and provided, says that said Plaintiffs ought not further to have or maintain their aforesaid action, because they say that at the time of the issuing of the said Policy in Plaintiffs' declaration mentioned, the said ~~them~~ plaintiffs by their application and survey thereto attached, and which forms a part of said Policy, represented and warranted that the said Building in which the said goods so as aforesaid insured were deposited, was used as a Wholesale and retail Hardware store— Yet the said defendants say that the said building was used for other and different purposes, to wit, for Groceries, and for clothing and Furnishing goods, contrary to the form and effect of said Policy, and the Conditions referred to in said Policy, and endorsed thereon— And this the said defendants are ready to verify, wherefore they pray judgment, if the said plaintiffs ought further to have or maintain their aforesaid action against them &c.

And for a further plea in this behalf, the said defendants, by leave of the Court here for this purpose first had and obtained, according to the form of the Statute in such case made and provided, say that the plaintiffs ought not to have or maintain their aforesaid action, because they say, that at the time of the issuing of the said Policy, in the said

plaintiffs declaration mentioned, the said plaintiffs by their application and survey referred to in said Policy, and which forms a part thereof, represented and warranted to the said defendants, that the said Building in which the Goods so as aforesaid were insured, were deposited, was used for the purpose of wholesaling and retailing of Hardware— Nevertheless the said defendants say that the said Building was used for other and different purposes, to wit, for depositing Groceries, and for depositing and selling clothing and furnishing goods, which increased the risk and danger of said goods, and said Insurance, contrary to the form and effect of the said Policy, and the conditions thereto annexed, and of their said warranty, and this the said defendants are ready to verify, wherefore they pray judgment if the said Plaintiffs ought further to have and maintain their said action against them &c.

And for a further Plea in this behalf, the said defendants by leave of the Court for this purpose first had and obtained, the said defendants say that before and at the time of the issuing of said Policy, the said Plaintiffs by their application and survey, represented to the said defendants that the said Building in which the said Goods so as aforesaid insured, were deposited, were used for the wholesale and retail of hardware Nevertheless

the said Plaintiffs, after the making and issuing of said Policy, to wit, on the first day of October, 1857 caused or permitted the same to be used for other or different purposes, to wit, for the depositing of Groceries, and for the depositing and sale of clothing and furnishing goods, thereby increasing the risk and damage of said Goods, insured by the said Policy, without the consent of said defendants, thereby altering the terms and conditions of said Policy, and the conditions refered to in said Policy, and endorsed therein, contrary to the form and effect of said Policy, and conditions, and this the said defendants are ready to verify, wherefore they pray judgment if the said Plaintiffs ought to have or maintain their said action against them &c.

And for a further Plea in this behalf, the defendants by leave of the Court here for this purpose first had and obtained, according to the Statute in such case made and provided, says, That the Plaintiffs ought not to have or maintain their said action against them, because they say, That the number of Tenants in said Building, in which the Goods, Wares and Merchandise were deposited, was not truly and correctly represented and warranted in the said Application and Survey, which formed a part of said Policy, and upon which the same was issued, but the same was entirely and falsely represented and warranted, and otherwise than they

really were, contrary to the form and effect of the said Policy and the said conditions referred to by said Policy, and endorsed therein— And this the defendants are ready to verify, wherefore they pray judgment if the said Plaintiffs ought to have or maintain their aforesaid action thereof against them &c—

And for a further Plea in this behalf, the said defendants, by leave of the Court here for this purpose first had and obtained, according to the form of the Statute in such case made and provided, say that the Plaintiffs ought not to have or maintain their said action against them, because they say, that the purpose for which the Building in which the said Goods insured, were deposited, was used, was not correctly or truly represented and warranted, and the same was used for other and different purposes than represented and warranted, and the purpose for which the building was used, was represented and warranted to be used in the said Application and survey, which formed a part of the Policy, otherwise than they really were, contrary to the form and effect of the said Policy, and the said conditions referred to in the said Policy, and endorsed therein— And this the said defendants are ready to verify, wherefore they pray judgment if the said Plaintiffs ought to have or maintain their said action against them &c—

And for a further Plea in this behalf the said defendants, by leave of the Court here for this purpose first

had and obtained, according to the Statute in such case made and provided, say the Plaintiffs ought not to have or maintain their said action against them, because they say that at the time of the issuing of said Policy, the said Plaintiffs by their said application and Survey, and which forms a part of said Policy, represented and warranted that there was but one Tenant in the Building in which the said Goods so insured as aforesaid, were deposited, yet the said defendants say that after the issuing of said Policy to wit, on or about the first day of October 1857. to wit at Chicago aforesaid, the said Plaintiffs caused or permitted other Tenants to occupy said Building, or a portion thereof, contrary to the form and effect of said Policy, and said warranty, and the conditions referred to in the said Policy, and endorsed therein, and this the said defendants are ready to verify, wherefore they pray judgment if the said Plaintiffs ought to have or maintain their aforesaid action thereof against them &c—

And for a further Plea in this behalf, the said defendants, by leave of the Court here for this purpose first had and obtained, according to the Statute in such case made and provided, say that the Plaintiffs ought not to have or maintain their aforesaid action against them, because they say that before and at the time of the issuing of the said Policy, the said Plaintiffs by their said application and Survey, and which forms a part of said Policy, represented and

warranted that there was but one Tenant in the building in which the said Goods so insured as aforesaid, were insured, were deposited, yet the said defendants say that at the time of such insurance there was more than one tenant, to wit, twenty tenants in said building occupying the same, contrary to the said warranty of the said plaintiffs, and contrary to the form and effect of the said Policy, and of the conditions therein written, and forming a part thereof, and this the said defendants are ready to verify, wherefore they pray judgment if the said plaintiffs ought to have or maintain their said action thereof, against them &c—

E. A. & J. Van Buren

Defts Attys

And afterwards, to wit, on the 26th day of February A.D. 1859. the said plaintiffs by their said attorney, filed in the Court aforesaid, their certain Replication to the Pleas of the said defendants, in the words and figures following to wit—

State of Illinois— County of Cook—

Of the Special February Term—A.D. 1859.

Of the Cook County Circuit Court—

Samuel H. Comick et al

vs

The Howard Marine & Fire Insurance Company of Philadelphia

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And the said Plaintiffs for further replication to the pleas of the said defendants, by them secondly, ninthly and twelfthly, above filed, by leave of the Court for that purpose first had and obtained, according to the Statute &c. say that they ought not, by reason of anything in said Pleas alleged, to be barred from having and maintaining their action aforesaid against the said defendants, Because they say that prior to, and at the time of the issuing of the said Policy of Insurance Samuel S. Ellsworth and Wadsworth were the agents of the said defendants at Chicago, and as such agents were supplied by the said defendants with Blank policies of Insurance, such as were then used by said defendants, and issued by them to persons insured by them, only executed by said defendants, and authorized and empowered the said Ellsworth & Wadsworth, as such agents, as aforesaid, to solicit and receive applications for insurance by said defendants, and to make examination and survey of premises, Goods &c. sought to be insured by them, and to fill up, countersign and deliver the Policies so furnished and executed by the said defendants, to Persons desiring Insurance by them — and the said Plaintiffs in fact say that prior to the issuing of the said Policy of Insurance, in the said declaration mentioned, the said Samuel S. Ellsworth, so being the agent of the said defendants aforesaid, and authorized to solicit and receive applications for Insurance for the said defendants as aforesaid,

and to make examinations and surveys as aforesaid, was present at the Building occupied by the said Plaintiffs, and in which the Goods, wares and merchandise of the said Plaintiffs, mentioned in the said Policy of Insurance, were situated, and made personal examination and a survey thereof, for said defendants, and was their agent with reference to an Insurance of said Goods, wares and merchandise, and the said Ellsworth, so being such agent of the said defendants as aforesaid, was then and there informed by such examination and survey, and by the said plaintiffs and their agent, that portions of said Building had been leased by the said Plaintiffs to other persons, and were then used and occupied by such Lessees, and of the exact number of persons so occupying the different portions of said Building, as Lessees of the said Plaintiffs, and of the whole number of Tenants then in and using said Building—

And the said Plaintiffs further say that the said Ellsworth, so being informed of the exact number of persons in, and occupying said Building, and so being the agent of said defendants, with power and authority to bind the said defendants as aforesaid, then and there, made out, presented to the said plaintiffs the application for Insurance by the said defendants mentioned in the said second, ninth and twelfth Pleas aforesaid, represented the same to be a full and sufficient description of the number of Tenants in said Building,

for all the purposes of a valid insurance by the said defendants, of the said Goods &c. in said application described_

And the said Plaintiffs further say that they, relying upon the statement of the said Ellsworth, as to the sufficiency of said application for the purposes aforesaid, at the request of said Ellsworth, signed said application so made out by him, and paid to the said Ellsworth for the said defendants, the Premium mentioned in said Policy, and the said Ellsworth & Wadsworth thereupon, and upon the application aforesaid, so made out and signed as aforesaid, filled up, countersigned and delivered to the said plaintiffs, the said Policy of Insurance in the said plaintiffs' declaration ~~mentioned~~ described_ and this the said plaintiffs are ready to verify, wherefore they pray judgment, if they, the said plaintiffs ought by reason of anything in the said 2nd, 9th and 12th Pleas alleged, to be barred &c_

And for a further Replication to the said 2nd, 9th and 12th Pleas of the said defendants, the said plaintiffs by leave of the Court &c. say precludi non_ Because they say that before the issuing of said Policy of Insurance, and the signing of the application therefor, by the said plaintiffs, the said defendants by their Agents duly authorized by them to receive and solicit applications for Insurance, by the said defendants, made personal examination and survey of the Building

in which the said Goods, wares and merchandise mentioned in said Policy, were situated, and were then and there informed by the said plaintiffs and their agents, and by said examination and survey, so made as aforesaid, that the said Plaintiffs had subleased the Basement and portions of the upper stories of said Building, and that the portions of said Building so sub-leased, were then, and at the time of the making out of said application and the issuing of said Policy of Insurance, in the actual occupancy of the several persons sub-leasing the same as sub-tenants of the said plaintiffs, and the said plaintiffs aver that the said defendants, so being informed as aforesaid of the number of sub-tenants using and being in the said Building, by their agent duly authorized as aforesaid, made out and presented to the said Plaintiffs, the Application in the said Plea mentioned, and requested the said plaintiffs to sign the same - and said plaintiffs further aver that the said defendants well knowing the condition of said Building, and the number of sub-tenants therein, and then and there well knowing all the conditions and requirements of the said Policy of Insurance, about to be issued by them to the said plaintiffs, and what was necessary and proper to be set forth in the said application, in order that the said plaintiffs might procure from the said defendants, a valid Insurance upon the said Goods,

then and there by their Agent aforesaid, improperly, falsely and fraudulently stated and set forth in and by the application aforesaid, so made out by them as aforesaid, that said Building was occupied by one tenant only, and then and there by the said application so made out as aforesaid, represented to the said plaintiffs that said application sufficiently set forth particulars of the occupancy of said Building for all the purposes of a valid Insurance of said Goods of said Plaintiff in said Building, by the defendants— And the said plaintiffs relying upon the representation of the said defendants by their agent as aforesaid, at the request of the said defendants, signed the said application for insurance by the said defendants, so made out by said defendants, and delivered the same to said defendants, and paid to the said defendants the Premiums mentioned in the Policy of Insurance aforesaid, and that the said defendants thereupon executed and delivered to the said plaintiffs, and the said plaintiffs then and there received from the said defendants the said Policy of Insurance in the said plaintiffs' declaration mentioned— without this, that the said plaintiffs never at any time or in any manner warranted to the said defendants the number of Tenants occupying said Building, and this they the said plaintiffs are ready to verify, wherefore they pray judgment &c—

And for a further Replication to the Pleas of said

Defendants by them thirdly and fourthly above pleaded, the said plaintiffs by leave of the Court first had and obtained, according to the Statute &c. say That by reason of anything in the said Pleas contained, the said Plaintiffs ought not to be bared from having and maintaining their action aforesaid against the said defendants— Because they say that prior to the issuing of said Policy of Insurance in the said pleas mentioned, the said defendants by their Agent duly authorised, made personal examination and survey of the Building in which the said Goods were deposited, and were informed by such examination and survey, and by the said plaintiffs and their Agents, of all the purposes for which said Building was used— and the plaintiffs aver that the said defendants, so being informed of the purposes for which said Building was used as aforesaid, by their agent duly authorised as aforesaid, made out and presented to the said plaintiffs, the application for Insurance in the said Pleas mentioned, and then and there represented to the said plaintiffs, that said application so made out by them, contained a sufficient description of the purposes for which said Building was used, for all purposes of a valid insurance of said Goods by said defendants— and the said plaintiffs thereupon, and at the request of the said defendants, signed said application, and paid to the said defendants the Premium for Insurance, in said

Policy, described, and the said defendants, upon the application aforesaid, so made out by them and signed by the plaintiffs as aforesaid, executed and delivered to the said plaintiffs, and the said plaintiffs then and there received from the said defendants, the Policy of Insurance in the plaintiffs said declaration described, without this, that the said plaintiffs ever at any time, or in any manner, warranted to the said defendants, the purposes for which said Building was used, and this the said Plaintiffs are ready to verify, wherefore the said plaintiffs pray judgment &c.

And for a further Replication to the pleas of the said defendants, by them sixthly, seventhly and above pleaded, the said Plaintiffs by leave of the Court first had and obtained &c. say that by reason of anything in the said Pleas alleged ought not to be barred from having and maintaining their action aforesaid, against the said defendants, Because they say that prior to the execution and delivery of the said Policy of Insurance, in the said Plaintiffs' declaration ~~alleged~~, described, the said defendants by their Agent duly authorized, made personal examination and survey of the Building in which the Goods of the said plaintiffs were deposited, and every part thereof, and were informed by such examination and survey, and by the said plaintiffs and their agents, that a portion of said Building to wit, the Basement of the same, was used by a sub-lessee

thereof from the said plaintiffs, for depositing Groceries, and that another portion of said Building, to wit, the story of said Building next above the one used by the plaintiffs, was used by another sub lessee of the said plaintiffs, for depositing and selling clothing and furnishing goods - and the said plaintiffs aver that the said defendants, so being informed of the uses of the different portions of said building as aforesaid, by their agent aforesaid, then and there made out and presented to the said plaintiffs, the application for insurance in said plea mentioned, as and for a sufficient description of the purposes for which said building was used, and then and there represented to the said plaintiffs, that said application so made out by them, contained a sufficient description of the purposes for which said Building was ~~insured~~, used, for all purposes of a valid Insurance of said Goods & by the said defendants, and then and there requested the said plaintiffs to sign the same - and the said plaintiffs aver that they, relying upon the representation of the said defendants aforesaid, as to the sufficiency of said application - And at request of said defendants, signed the said application for insurance, and paid to the said defendants, the premium for insurance in the said Policy mentioned, and the said defendants thereupon, and upon the application aforesaid, made out, executed and delivered to the said plaintiffs, the said Policy of Insurance,

57 in the said Plaintiffs' declaration described and this the said plaintiffs are ready to verify - wherefore they pray judgment &c -

James Clapp, atty for Plffs -

And afterwards, to wit, at the April term of said Court, to wit, on the 12th day of April in the year last aforesaid, the following proceedings among others, were had and entered of record in said Court, to wit -

Samuel H. Cornick, Francis C. Crow & Robert B. Clark, use &c.
vs
The Howard Fire and Marine Insurance Company, Philadelphia
} Covenant -

128 92

This day come as well the said plaintiffs, by James Clapp their attorney, as the said defendant, by E. A & J. Van Buren its attorneys and on motion of the said defendant's counsel, it is ordered that the said plaintiffs' replication filed herein on the 26th day of February last past, be, and they hereby are stricken from the files of said cause with leave for said plaintiffs to give the facts therein set forth in evidence, on the trial of said cause, in the same manner as if specially replied, subject however to all objections to the admissibility of such evidence, and to which said ruling of the Court herein above set forth, both parties say they are content -

And afterwards, to wit, at the same term of said

Court last aforesaid, to wit, April 18th A.D. 1859. the following proceedings among others were had and entered of record, to wit—

Samuel H. Cornick, Francis C. Cropp & Robert C. Clark, use &c. vs Howard Fire & Marine Insurance Company, Philadelphia } Covenant—

This day again come as well the said plaintiffs, by James Clapp their attorney, as the said defendant by E. A & J. Van Buren, its attorneys, 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, W. H. Wood, J. K. Barnes, M. L. Nichols, A. Thompson, Samuel Miles, H. Depuy, L. L. Paddleford, H. Nenthing J. Reune, G. L. Butler, L. M. Carver, William Coleman, who being duly elected, tried and sworn well and truly to try the issues joined aforesaid, and a true verdict render according to law, and the evidence, and after hearing a part of the evidence, the hour of adjournment having arrived, it is ordered that said Jury have leave to seperate, to meet the Court at the coming in thereof, tomorrow 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 April, in the year last aforesaid, the following proceedings

59 among others, were had and entered of record therein to wit—

Samuel H. Cornick, Francis C. Cross & Robert C. Clark use &c.
12892 vs
The Howard Fire & Marine Insurance Company of Philadelphia
} Covenant—

This day again come as well the said Plaintiffs by James Clapp their Attorney, as the said defendant by E. A & J. Van Buren its attorneys, and the Jurors of the Juror aforesaid also come, and the testimony in this cause having been closed, and the said Jury having heard arguments of Counsel as well on the part of the said plaintiffs as of the said defendants, and the instructions from the Court, retire to consider of their verdict, under the charge of a sworn officer of the Court, and afterwards come into Court and say, "We, the Jury, find the issues herein for the plaintiffs, and assess their damages at the sum of Five thousand, four hundred dollars, and thereupon the said plaintiffs remit to said defendant from said verdict, the sum of six hundred Dollars, whereupon the said defendant's Counsel moves the Court for a new trial of said cause, and in arrest of judgment—

And afterwards, to wit, at the May term of said Court, to wit, on the seventh day of May in the year last aforesaid, the following proceedings among others,

were had and entered of record therein, to wit—

Samuel H. Cornick, Francis C. Croft, & Robert C. Clark use &c.

12892 vs

The Howard Fire & Marine Insurance Company, Philadelphia } Covenant—

This day come as well the said Plaintiffs, by James Clapp their attorney, as the said defendant by E. A. & J. Van Buren its attorneys, and the Court having heard arguments of Counsel, on the motions of the said defendant heretofore submitted for a new trial of this cause, and in arrest of judgment, as well in support thereof, as in opposition thereto, and being fully advised in the premises, now orders that said motions be, and they each are hereby overruled, to which the said defendant by its counsel, now here excepts—

Therefore it is considered by the Court that the said plaintiffs for the use and benefit aforesaid, do have and recover of the said defendant, their damages of Five thousand, four hundred dollars (less the sum of six hundred dollars, heretofore remitted by the said plaintiffs from the verdict of the Jury in this cause) in form as aforesaid by the Jury aforesaid assessed, together with their costs and charges by them about their suit in this behalf expended, and have execution therefor—

Whereupon the said defendants counsel excepts, and

61 prays an appeal to the Supreme Court of the State of Illinois, which is granted by the Court on condition that the said defendant shall by the 25th day of May instant, execute and file with the clerk of this Court, its appeal bond herein, in the penal sum of Ten thousand, seven hundred and eighty eight dollars, conditioned according to law with William B. Ogden and William H. Stow sureties thereto - and on motion it is ordered that said defendant have till the 25th instant, to file its bill of exceptions herein -

And afterwards to wit, at the same term of said Court last aforesaid, to wit, on the 21st day of May in the year last aforesaid, the following proceedings among others, were had and entered of record therein, to wit -

Samuel A. Cornick, Francis C. Crosby & Robert C. Clark use &c.
vs
The Howard Fire and Marine Insurance Company Philadelphia
} Covenant -

12892

On motion of E. A. & J. Van Buren of Counsel for said defendant, no objection being made thereto, it is Ordered that the time to file bond and bill of exceptions herein, be entered twenty days from the 25th day of May instant -

And afterwards, to wit, on the same day and year last aforesaid, the said defendant by its attorneys, filed in the Court aforesaid, its certain bill of exceptions, in the words and figures following, to wit -

State of Illinois
Cook County

Be it remembered that in the term of April 1859. before the Honorable George Manierre, Judge of the Cook County Circuit Court, came on to be heard, a certain action of covenant, in which Samuel H. Cornick, Francis Cros and Robert C. Clark were plaintiffs, and the "Howard Fire and Marine Insurance Company" were defendants— The Declaration was in covenant upon a Policy of Insurance, the defendants pleaded non est factum, and special pleas—

At which day came there as well the said Samuel H. Cornick, Francis C. Cros and Robert C. Clark, as the said Howard Fire and Marine Insurance company by their respective attornies, and the Jurors of the Jury aforesaid, impannelled to try the issues joined between the parties, being called, also came, and were then and there in due manner chosen, and sworn to try the same issue, and upon the trial of that issue, the Counsel learned in the law for the said Samuel H. Cornick, Francis Cros and Robert C. Clark, to maintain and prove the said issue, on their part offered in evidence, The Policy of Insurance with the conditions and application of which the following is a copy—

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The Howard
Fire and Marine
Insurance Company

Franklin Buildings— No 94 Walnut street.

No 14

$5000.

By this Policy, The Howard Fire and Marine Insurance Company of Philadelphia,
In consideration of Sixty two 50/100 dollars, the receipt whereof is hereby acknowledged, Do insure Cornick, Cross & Co. of Chicago, Illinois—
Against loss or damage by fire, to the amount of Five thousand dollars, on the following property, as described in Application and survey, No fourteen, which is hereby declared to be a part of this Policy, and a warranty on the part of the assured, viz— On Merchandise Hazardous and not Hazardous, contained in the Five Story Brick Building with Metal Roof and Iron shutters, in rear and Sides, occupied by the assured as Dealers in Hardware, Cutlery and Rail Road and Car Furnishing materials, situate on the South side of South Water Street Nos. 131 & 133. between Clark and Dearborn streets—
Other Insurance permitted without notice until required—
And the said Company do hereby promise and agree to make good unto the said assured, their Executors, Administrators and Assigns, all such immediate loss or damage, not exceeding the amount hereby

insured, nor three-fourths of the appraised cash value of any building above the foundation, destroyed or damaged, as shall happen by fire to the property, as above specified, from the Twenty-sixth day of September, one thousand, eight hundred and fifty seven, (at 12 o'clock at noon) unto the Twenty sixth day of September, one thousand eight hundred and fifty eight (at 12 o'clock at noon) the said loss or damage to be estimated, at a sum not exceeding in any case, the price paid therefor, by the party hereby insured, nor above the actual cash value thereof, at the time shall happen, and to be paid within sixty days after notice, proof and adjustment thereof, in conformity to the conditions annexed to this Policy, unless the said Insurance Company shall within thirty days after the proof of such loss or damage, give directions for rebuilding, or repairing, or if Merchandise, or personal property, restoring the same, as before the fire—And in case any difference shall arise, touching such loss or damage, or the relative condition or value of said property, when rebuilt, repaired or restored, the Company may require it to be submitted to the judgment of arbitrators chosen in accordance with the 10th Article of conditions annexed to this Policy, whose award in writing shall be binding on both parties—Provided always, and it is hereby declared that this Company shall not be liable to make good any loss by theft, or property stolen—nor for any loss or damage caused

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by the bursting or explosion of any steam boiler or flues of any steam engine — nor for any loss or damage caused by the bursting or explosion arising from any other cause, or any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or by any earthquake or hurricane — And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this Company, and mentioned in or endorsed upon this Policy, then this insurance shall be void and of no effect — and the assured hereby covenants and engages that the representation given in the application for this insurance, is a warranty on the part of the insured, and contains a just, full and true exposition of all the facts and circumstances in regard to the condition, situation and value of the property insured, and that if any fact or circumstance shall not have been fairly represented — or if the said assured or their Assigns shall hereafter make any other insurance on the same property, and shall not give immediate notice thereof to the Secretary, and have the same endorsed on this instrument, or otherwise acknowledged by him in writing, then this Policy shall cease and be of no effect — The interest of the assured in this Policy, or in the property insured thereby, is not assignable unless by consent of the Company manifest-

ed in writing, and in case of any transfer or termination of such interest, or any part thereof, either by sale or otherwise, whether prior or subsequent to any loss or damage, without such consent, this Policy shall thenceforth be void and of no effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this Policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this Company any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property, without reference to the solvency, liability or responsibility of other Companies insuring thereon — and whenever this Company shall pay any loss, the assured agrees to sign over all his right to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor at the charge and for account of the Company if requested — Camphene, spirit gas or "burning fluid" when used in stores or warehouses as a light, subjects the goods therein to an additional charge — and permission for such use must be endorsed in writing on the policy — Gunpowder is expressly prohibited from being deposited, stored or kept in any building insured, containing any goods or merchandise, other than of the kinds insured by this Policy, unless by special consent in writing on the Policy, And it is agreed and declared to be the true

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intent and meaning of the parties hereto, that in case the above mentioned building shall at any time after the making and during the continuance of this Insurance, be appropriated, applied or used, to or for the purpose of carrying on, or exercising therein any trade, business or occation, which would in any way increase the risk, or rates of insurance, or for the purpose of storing, keeping, or vending therein, any articles, goods or merchandize, other than of the kind, and description mentioned in the application and this Policy, unless otherwise specially provided for, or hereafter agreed to, by this Company in writing, and added to or endorsed upon this Policy— then and from thenceforth, these presents shall cease and be of no ~~effect~~ force or effect— And it is moreover declared, that this insurance is not intended to apply to, or to cover any books of account, written securities, deeds, or other evidences of titles to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money, bullion, jewelry, musical instruments, or spirituous liquors— It is also declared, that this Policy is made and accepted in reference to the written and printed application whereon it is issued, and also to the conditions hereto annexed, which are hereby made a part of this Policy, and to be used and resorted to, in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for— And it is also agreed and declared, by the parties aforesaid, that no condition, stipulation, covenant

Countersigned at Chicago, Illinois, this Twenty-sixth day of September, 1857.
Ellsworth & Wadsworth Agents

or clause herein before contained, shall be altered, annulled or waived, or any clause added to these presents, except by writing endorsed hereon, or annexed hereto, by the President or Secretary, with their signatures affixed thereto—

Not valid until countersigned by Ellsworth and Wadsworth—Agents—

Seal

In witness whereof, the Common Seal of said Corporation is hereunto affixed, this Twenty-sixth day of September, in the year of our Lord, one thousand, eight hundred and fifty seven—

Wm. H. Woods—Secretary— Percival M. Potts, President
R. J. Kendil—Treasurer— C. E. Spangler Vice President.

Conditions of Insurance—

Persons desirous of making insurance, are to furnish the Secretary or Agent of the Company, with the following information—

1— Of what materials the walls and roof of each Building, are constructed, as well as the construction of the Buildings within fifty feet contiguous thereto—

2. Whether the same are occupied as private dwellings, or otherwise—

3— Where situated, and how many stories high—

Each Building must be seperately insured— and in like manner a seperate sum insured on the property contained therein—

4— In the Insurance of Goods, Wares or Merchandise,

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the Building or place in which the same are stored or deposited, is to be described - also, whether such goods are of the kind denominated hazardous or extra hazardous, and whether any manufacturing is carried on in the premises - And if any person shall insure his or their Building or goods, and shall cause the same to be described in the Policy otherwise than as they really are, such insurance shall be void and of no effect - or if, after the insurance is effected, either by an original policy, or by the renewal thereof, the risk shall be increased by the erection of Buildings, or by the use or occupation of the neighbouring premises, or by any means whatsoever, it shall be the duty of the assured to give immediate notice thereof to this Company, pay such additional premium as they shall determine, and obtain their written consent to the continuation of this Policy - otherwise it shall be void -

And if at any time, the Company shall so elect, it shall be optional with the Company, to terminate the insurance, after notice given to the insured or his representative, of their intention to do so - in which case the Company shall refund a rateable proportion of the Premium

Any Building insured by this Company, becoming vacant or tenantless for a period of thirty days, notice thereof must be immediately given to the Secretary, and his consent thereto obtained in writing, otherwise this Policy shall be void -

3 - Property held in trust, or on commission, must be

insured as such, otherwise the Policy will not cover such property - and in case of loss, the name of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interest therein. Goods on storage must be seperately and specifically insured - If the interest in the property to be insured, be a leasehold or other interest, not absolute, it must be so stated in the Policy, otherwise it shall be void -

6 - No Insurance, whether original or continued, shall be considered as binding until the actual payment of the premium - or if the premium named in this policy, or any obligation which may be given for such insurance, or any part of it, remains unpaid, or the conditions of such obligation are not fully complied with, this Policy shall be void and of no effect -

7 - The interest of the insured in this Policy is not assignable, unless the assent of this Corporation be first obtained - notice of such assignment shall be given before any loss may have happened, and this Company when so notified, may elect either to continue the insurance, and express the same by endorsement on this Policy, or refund a ratable proportion of the premium for the time of the risk unexpired, and cancel the Policy -

8 - Notice of all other insurances, whether prior or subsequent to the date of this Policy, must be given the Company, and their consent thereto endorsed upon this instrument, or otherwise acknowledged in writing, other

wise this Policy shall be of no effect—

2— 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 fail to do so, this company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect— And it is mutually understood and agreed that there can be no abandonment to the insurers of the subject insured— and also that this Company or their agent, have the right to examine and take account of the property saved, and that every facility, be given to enable them to do so—

If no notice of a loss is given within thirty days from the time when it happened, it shall be discretionary with the Directors to reject or allow the claim or any part thereof— And no repairs in the premises shall be made after a fire, until notice is given to the Company, and they have had an opportunity to view and examine—

3— Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing, to the Company— And as soon thereafter as possible, they shall deliver to this Company a schedule or list of articles destroyed or damaged, stating who are the owners thereof— that at the time of and immediately before the fire, the subject insured was in, upon, or at the place or location specified in the Policy, and covered thereby, and that the same was either destroyed or damaged (as

the case may be) by fire — 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 insurances have been made on the same property — what was the whole cash value of the subject insured at the time of such loss, 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, and who were the occupants of such building, and when and how the fire originated, so far as they know or believe, or have any information — When merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order as possible, assorting and arranging the various articles according to their kinds — and cause a list or inventory of the whole to be made — The damage shall then be ascertained by the examination and appraisal of each article by two disinterested appraisers, under oath, one chosen by the Company, and one by the insured, and in case of their disagreement, they shall nominate a third person to act as umpire between them and the award in writing, under the hands of such appraisers, or any two of them, shall be binding and conclusive as to the amount of damages, upon both parties, to this Policy — and if this Company or their Agent shall require such an examination or appraise-

73 ment, it shall be so submitted, otherwise this Company will not be liable for any loss or damage under this Policy—

The expense of ascertaining and proving any loss that may occur, and also of forwarding such proofs to the office of the Company, shall be paid by the party insured—And said Company shall in no case be deemed to have waived a full, literal and strict compliance with, and performance of, each and every of the terms, provisions, conditions and stipulations in this Policy contained and hereto annexed, to be performed and observed by, and on the part of the insured,# or anyone claiming by, through or under him, to comply with and observe and perform the same, shall have occurred—

And if any Agent of this Company, in the transaction of their business, shall assume to violate these conditions, such violations shall be construed to be the act of insured, and shall render void this Policy—

And whenever required, the insured, or person claiming shall produce and exhibit the books of account, bills of purchase, or duplicates thereof, and other vouchers, to the insurers or their Agent, at the office of this Company, in support of the claim, and leave them with this Company, a sufficient length of time to permit extracts and copies thereof, to be made—

And shall also if required, submit to an examination under oath, by the Agent or Attorney of this Company and answer all questions touching his, her, or their

And every person claiming by, through, or under them unless such waiver be express and manifest in writing, under the signature of the Secretary of said Company, before any failure on the part of the insured

knowledge of anything relating to such loss or damage, and subscribe and make oath to such examination, the same being reduced to writing. And until such proofs, examinations, declarations, certificates and exhibitions are produced, and permitted by the claimant, when required as above, the loss shall not be payable.

Any misrepresentation or concealment, fraud or false swearing, shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against this Company under the within Policy.

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

When premises have been on fire, or an attempt made by an incendiary to fire the same, assured must give immediate notice to this office, and on failure to do so, this Policy will be void.

This Company shall not be liable for accidents accruing by fire occasioned by gas burners coming in contact with goods displayed in show windows, or any loss accruing therefrom.

11.

75 12 Payment of losses shall be made at the end of sixty days after the loss shall have been ascertained and proved, and the aforesaid conditions fully complied with—

13 It is furthermore hereby expressly provided, that no suit or action of any kind against this 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 six months next after the cause of action shall have accrued—

14 Insurances once made may be continued for such further time as may be agreed upon, the premium required therefor being paid and endorsed on this Policy, or a receipt given for the same— and all insurances, original or renewed, shall be considered as made under the original representations, in so far as it may not be varied by new representations, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings, or by any change of interest or ownership— And should there during the life of the Policy, an incumbrance fall, or be executed upon the property insured, sufficient to reduce the Real interest of the insured in the same to a sum only equal to, or below the amount insured, or if it shall be levied upon, or taken into possession or custody under an execution or other proceeding

at law or equity, and the assured shall neglect or fail to obtain consent of the Company thereto, then and in that case, the Policy shall be void—

No 14—

Application of Cornish, Cross & Co. of Chicago, Illinois—

To the

Howard Fire and Marine Insurance Company—

Franklin Buildings, No 94 Walnut Street,

For Insurance

Against loss or damage by Fire, to the amount of $5,000. For 1 year from the 26th day of September, 1857. to the 26th day of September, 1858. on the following property, each Building or Stock therein, to be separately Insured—

On Merchandize, Hazardous and not Hazardous, contained in the Five Story Brick Building with metal roof and iron shutters, in Rear and sides, occupied by the assured as Dealers in Hardware, Cutlery, Rail Road and car Furnishing materials, situate on South side of South Water street, Nos 131 & 133. between Clark and Dearborn streets—

Amount $5.000— Rate 1¼ % Prem. $62.50

This Company is not to be held liable for any loss or damage by Fire caused by Locomotive Engines—

Note—In all applications for Insurance on Grist and or Flouring Mills, state number of Runs of Stones—and on Tanneries, whether with or without Leaches—also in Saw Mills, how many Saws, and in all cases the Moving Power in or within 50 feet of the premises to be Insured

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Survey

It is expressly agreed to, on the part of the applicant that this Survey as well as the Diagram of the premises herewith, shall form part and be a condition of this Insurance.

Town, or City, name of Street and Number — Chicago - South Water St. Nos 131 & 13

1. Building — Is it Stone, Brick, or wood — Brick —
How many stories high? 5 —

2. Walls — Party or division, are they brick? yes —
~~Exterior~~ — Are they entire? yes —
How high above the roof — 10 inches —

3. Roof — What is it covered with — Composition —

4. Stoves — If used, how many — 3.
What is under them — Zinc —

5. Pipe — Is it in good order — yes —

6. Ashes — How are they disposed of — On street —

7. For what purpose is the Building used — Wholesale & Retail Hardware
How many tenants — one.

8. Distance of other buildings within fifty feet — Connected —
Of what materials built — Brick —
How occupied, Wholesale stores —

9. Is there steam power used in

or within fifty feet of premises to be Insured— No—

10— State whether any other and what Insurance is effected on the property now to be Insured— $22.000.

11— State fully the Applicants interest in the property Insured, whether owner, mortgagee, lessee &c. and whether encumbered, and how— Owners & not encumbered

12— Have you ever been burnt out, or damaged by fire— No—
If so, were you insured?

13— Are there any other material facts or circumstances relative to this risk, which this Company ought to be made aware of— None—
If so, state them—

Cornick, Cropp &c. Applicant

L. L. Ellsworth Surveyor—

Surveyor will give an exact copy of the body of the Policy "Five thousand Dollars on Merchandise hazardous and not hazardous, contained in the Five Story Brick Building with metal roof and iron shutters, in rear and sides, occupied by the assured as Dealers in Hardware, Cutlery Rail Road and Car Furnishing materials, situate

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on South side of South Water Street, Nos. 131 & 133. between Clark and Dearborn streets – Chicago Illinois –

Diagram –

North –

For Diagram refer to Application No 8 by Armstrong Cornick & Co. dated August 28th 1857.

No 14 –

Howard Fire and Marine Insurance Co.

Application of

Cornick, Cross & Co.

Term, 1 year –

Expires, Sept. 26th – 1858.

Approved Sept. 26th 1857.

The Surveyor will fill the blanks following –

Applicants P. O. Chicago –

County of Cook, Illinois

Amount Insured $5,000

Cash Premium $62 50/100.

L. L. Ellsworth, Surveyor –

In taking risks, Surveyor will observe the following Rules –

1st Never to take Insurance on a wooden row of buildings –

2d. Never to expose more than $5000 by any one fire –

3d. In towns not having fire engines and water works

" charge from 15 to 30 cents in addition to the usual
" rates, unless there should be good reason to the con-
" trary, which must be mentioned in the application
pm The seal to the Policy was an impression upon pa-
per at the left hand corner of the policy, without
wax or any other adhesive substance, and without
any scraul or other seal except the impression upon
paper. To the introduction and reading of said Policy
in evidence, the Counsel for the defendant objected,
on the ground that the Policy was not sealed, and
the action being covenant, it was inadmissible under
the pleadings, which objection was overruled by the
Judge, who then and there decided that an action of
covenant could be maintained upon such an instru-
ment, to which decision and opinion, the defendants
by their attorney, then and there excepted.
The plaintiffs next gave in evidence proof of loss as re-
quired by the policy to the sufficiency of which no
objection was made. the plaintiffs then introduced
evidence tending to show the loss of the Goods insured,
and the ownership of them by the plaintiffs and
the value of them. the plaintiffs here rested their
cause.
The defendants to maintain and prove the issue, on
their part called as a witness, A. D. Gilsworth, who testi-
fied as follows. I know the premises occupied by Cor-
nick, Crops & Co. described in the Policy. the old numbers
were 169 and 111 on Water Street, the new numbers are

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131 and 133.– I occupied 2nd floor of both numbers, for about a year, but vacated the room no 111. before the fire– I occupied it for a clothing store– I occupied 111. till June 11. I occupied under Armstrong, Cornick & Co. After Armstrong went out of the concern, I occupied as tenant under Cornick, Cross & Co. paid rent to them–

The defendants then propounded the following questions– What do you know, if anything, in relation to other tenants occupying any portion of said building, previous to, and up to the 26th September– Plaintiffs objected to the question, and to any evidence on this subject, under the Policy– Objection overruled, and plaintiffs then and there excepted–

The upper part of the building was divided into sleeping rooms, and occupied by different persons– I could not say how many of the rooms were occupied– there were several, but whether a dozen I cannot say– those which were occupied were furnished with beds– can't say that there were stoves– Some of them continued to occupy such rooms down to the time of the fire–

The defendant here offered to prove that both previous and subsequent to the issuing of the policy, the upper rooms were resorted to by lewd women for lewd and improper purposes– to which evidence the plaintiffs objected, and the Court sustained the objection, to which decision of the Court, the Counsel for the defendants then and there excepted–

On the cross examination of this witness, he testified as follows—I do not know of more than one tenant or lessee of Dunham the Landlord, and lessor of the premises—I occupied as a sub-tenant of Plaintiffs—I do not remember when Armstrong went out—Plaintiffs occupied the first floor for purposes described in the Policy—

Plaintiffs then put this question—Is it not usual to sub-let the upper stories for sleeping rooms—Defendants objected, and objection sustained, to which plaintiffs then and there excepted.—

The defendant next called on a witness, John Summfield, who testified, I know the buildings in question—I occupied one of the rooms for six or eight weeks prio to the fire, and up to the time of the fire—Stansbury & my brother occupied the same room—it was No 10—My impression is all the upper rooms were occupied up to number ten—I could not say whether they all continued to occupy till the fire—don't know of any of those tenants leaving before the fire—The rooms were furnished with ordinary furniture for sleeping rooms—the tenants were usually there in the evenings—

On his cross-examination he said—I had no lease of the room, and paid no rent—I occupied by courtesy of Stansbury and my brother—there was no stove in my room—none in the others, that I am aware of—no families in either of the rooms—and no

cooking done in them that I know of.

83 The defendant then read in evidence the deposition of Francis H Cross, taken on the 2nd day of November 1857 which is as follows.

State of Illinois }
City of Chicago }
Cook County } Personally appeared before me a Justice of the Peace in and for the County of Cook and State of Illinois and practicing in the City of Chicago. Francis H. Cross who being duly sworn according to law true answers to give to all such questions as shall be propounded to him by James Fulton in relation to the fire which occurred on the morning of the nineteenth day of October eighteen hundred and fifty seven in the Building situated Nos 131 and 133 South Water St in said City of Chicago - and also true answers to give and correct statements to make in answer to all questions that shall be propounded to him by said James Fulton touching the amount of loss and damages caused by said fire to the property of Cornick Cross & Co. at the time of said fire contained in said building situate as above Nos 131 and 133 S Water Street in said City of Chicago - and likewise

Calvin D Wolf J.P.

true answers to give to such other questions touching said loss and damage so caused as aforesaid, and touching the insurance effected upon said property at the time of said fire, and all matters relating to said fire and the amount of loss and damage done thereby to said property as shall be propounded by the said James Fulton F. C. Cross.

Sworn to answer and Subscribed before me this 31st day of October 1857

C. D. Wolf J.P.

Calvin D. Wolf J.P.

F. C. Cross deposes and answers as follows. He is a member of the firm of Cornick, Cross & Co, Samuel H. Cornick, Francis C Cross this deponent Robert C Clark compose said firm. Said firm was the lessees of the building situated Nos 131 and 133 South Water Street Chicago Illinois. They leased the same from John H. Dunham who owned said buildings. The lease came through Armstrong Cornick & Co from the said John H Dunham and was transferred from said firm of Armstrong Cornick & Co to Cornick Cross & Co. The conditions of said lease were that said lessees should control the entire buildings except

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the Cellar under the Store No 131 which the said owner reserved for his own use for storing heavy groceries,

At the time said buildings were destroyed by fire October nineteenth Eighteen hundred and fifty seven said buildings situated Nos 131 and 133 South Water Street Chicago Illinois were occupied as follows

Basement of 131 occupied as above for storing heavy groceries by J. H. Dunham Cellar under 133 was occupied. three fourths by Clark and Dater for storing groceries and the other one fourth by said Conneck Cross &co, for Keeping grindstones, The first floor of both buildings being one room was occupied exclusively by Conneck Cross &co for Hardware Store. The second floor over No 131 was occupied by Titsworth Randolph &co as a wholesale Clothing and furnishing goods store. The second Story over 133 was vacant

The third floor over No 131 was occupied by the said Titsworth Randolph &co for storing clothing & furnishing goods,

The third floor over No 133 was vacant,

The fourth floor of both buildings were were occupied by Conneck Cross &co for storing hardware

Calvin D Wolf Jr

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Calvin Wolf & Co.

The fifth floor was rented by Cornick Crop &c to ten or twelve young men for sleeping rooms. The said buildings and the contents thereof was destroyed by fire on the morning of the nineteenth day of October eighteen hundred and fifty seven.

There was contained in said buildings situated Nos 131. & 133 South Water Street Chicago Ills hard ware rail road furnishings materials belonging to and owned by Cornick Crop & Co and were destroyed by said fire as follows, as per the following statement

Total amount of goods bought October 1st 1857 as Mdse a/c in ledger		$51,033.55
Amount of goods purchased from Oct 1st 1857 up till Oct 19, 1857		1.373.27
		$52,406.82
Amount of sales per ledger up till Oct. 1. 1857 as per Mdse a/c	19.790.16	
Amount of sales since up to Oct. 19/57	2.473.99	22.264.15
		$30.142.67
Cost of transportation to Oct 1st 1857		1.373.33
Peck & Co unpaid bill ft June 30/57		148.19
Marine Insurance on goods		142.26
		$31,806.45

The above statement sets forth the amount

87 of Hardware & car furnishing goods in said store which were destroyed by said fire without allowing profits on the amount of goods sold the profits on which were twenty pr cent.

In the above sum of $51,033,55 of goods purchased is included a purchase of goods from Pitkin & Bro by Armstrong Comick & Co of $14.172,44 which were paid for as follows, In cash twenty five hundred dollars by notes at 4 and 6 months bearing ten pr cent interest for twenty nine hundred eighty two 44/100 dollars, and a building lot in the City and same land in the Country which were taken at Ten Thousand six hundred & eighty nine 92/100 dollars,

The goods so purchased were estimated at cost prices with ten pr cent off as an inducement to the trade. The firm of Armstrong Comick & Co is the same and comprised of the same persons as Comick Crop & Co excepting that F. C. Crop this deponent is in place of E. R. F. Armstrong, Said deponent further states that said fire in his opinion did not originate in any part of said building which was occupied as above by Comick Crop & Co. He thinks that it originated in the second story of said buildings

Calvin D. Wolf L.P.

Nos 131 & 133. S. Water Street. He does not know how said fire originated.
All the information that he has in relation to the bad women frequenting said buildings Nos 131 & 133 S Water Street has been obtained by him since said fire occurred.

The above purchase from Pitkin Brothers was on the 21st March 1857 and the transfer from Armstrong Cornick & Co was on the 8th day of September 1857

The firm of Pitkin & Brothers commenced business in February 1855 and their predecessors in 1853.

There was no person had access into the said Building occupied by Cornick Cross & Co excepting the three members of the firm and the Porter

The books of the firm were all saved except the invoice book Inventory Book, and City sales Book and City Cash Book. The amount of the City sales which were on the said City sales book and which were not posted into the ledger or Medze ap would not exceed two hundred dollars. He has allowed to certain companies in view of settlement on certain conditions to allow Four hundred Dollars for what remains in rems of said stock. The conditions above alluded to is considering the amount of loss & damage to said

Calvin Dwolf J.P.

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Calvin D Wolf

stock of Hardware &c by said fire to be $30,033.87 on general Mdse.-

Said property was insured by the Howard Insurance Company as follows, On Mdse Hazardous: and not Hazardous contained in the five Story brick building with metal roof and iron shutters in rear & sides occupied by the ~~aforesaid~~ assured as dealers in hardware, Cutlery and rail-road and car furnishing materials situate on the south side of South Water Street Nos 131 & 133 between Clark & Dearborn Streets in the City of Chicago Ills. $10,000.- And was likewise insured on same property by the Atlantic of Brooklyn $5000.- The Astor of N. York $5000.- The Metropolitan of N.Y. $5000.- Merchants of Philadelphia $2000.- The Liverpool and London $5000.- on the above and goods on Commission.

There was no other insurance upon said property at the time destroyed by said fire,

The words "comprise said firm" and Hundred being first inserted

F. C. Cross

Sworn to answered before me this 2nd day of November 1857

Calvin D Wolf
Justice of the Peace

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~~The defendant read in evidence the deposition of Francis H. Cross, taken on the 2nd day of November 1857. which is as follows~~

To the introduction of which the plaintiffs objected, which objection was overruled, and plaintiffs then and there excepted - The defendants then rested their case -

The plaintiffs further to maintain their issue, called William H. Bunker, as a witness, who testified as follows - I know Mr. Ellsworth, Agent of the Howard Fire and Marine Insurance Co - to whom the plaintiff put the following questions - Did you apply to him, or have a conversation with him for insurance upon the stock in question - Answer - I did - it was on the 27th or 28th day of August, 1857. He was there acting as the agent and surveyor of the defendants -

The Counsel for the plaintiffs here offered to show that a short time prior to the time the policy was given, Mr. Ellsworth was applied to, to effect an Insurance - that he came to the store, and had conversation, and was duly informed of the number of tenants, and the occupancy by Mr. Gitsworth - it was admitted by plaintiffs that on the 27th or 28th day of August, 1857. another policy on the same goods was issued, to Armstrong Cornick & Co. (the predecessors in business of the plaintiffs and occupying the same premises) by the defendants -

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The defendants objected to evidence pro pour and the Court then and there overruled the objection and decreed that the evidence was proper, to which decision the defendants by their Counsel then and there excepted - The plaintiffs attorney then put the following question - "Tell all you know and recollect of the conversations and negotiations between plaintiffs and defendants, at or before the making of the application and survey in this case, and all the information and facts communicated by you to the defendants agent, previous to the application for the policy, in this case, more fully"

To this question the defendants objected, first, because the testimony was inadmissible and 2nd that the conversation should be confined to the time or about the time the policy was issued, and should relate only to the policy in this case - The Court overruled the objection, and decided the question was proper, and that the testimony was admissible, to which ruling and decision of the Judge, the plaintiffs then and there excepted - the witness then testified as follows - "I called on Mr. Ellsworth at his office on Lake Street in Chicago, to see about taking out a policy of insurance, on the 27th or 28th of August, 1857. I told him we wanted to take out a policy of insurance of $3000. I also told him my object in going there - which was that I understood he was agent of goods insurance

Companies, and that I had understood that he was doing insurance at a less rate than what we had been paying— I then asked him what his rate was— he replied what is the stock on which I wanted to take out insurance—

It was here admitted that on the 28th day of August 1857. a Policy of Insurance was issued by defendants to Armstrong, Cornick & Co. the predecessors of plaintiffs in business, upon the same stock of goods for $3000. and in the same building—

The defendants objected to the above testimony on the ground that the conversation related to another application and policy, and not to the one in question— which objection and motion was by the same Judge overruled, and he then and there decided that the evidence was admissible, to which decision the Counsel for the defendants then and there excepted—

The witness then further testified as follows— I replied Hardware, railroad furnishing goods &c. he replied that the rate would be $1.25. or $1250 on the $1000. I remarked to him that this was only a short policy, running only four months that one object in taking out this short policy was that at the end of that time our stock was lower than at other seasons of the year, and that we would not need as much insurance at the end of that time, he said if that was the case he would

have to charge at a higher rate for a short policy, than he would for one running a year. told him to make the rate as low as possible - that we would want of the Insurance shortly - that we had a policy about expiring in September, and that we would take that one out for a year, and that we would probably take it out in his company if he made the rate on the first as low as he could - He said it was customary to charge higher on short policies, but if you take both policies out through my Companies, or through my agency, I will name it all at a regular yearly rate $1.25. he explained it in this way, what I overcharge you on this over the regular yearly rate, I will deduct it from the premium on the other so as to make it all $1.25.

When the second policy was taken out, the allowance or deduction was not made - this agreement was made with me - Ellsworth then said he would call down to our office and see about the business - He called down at our store, and came up to my desk; at the store, of plaintiffs on Water street 131 & 133. at that the firm was Armstrong, Cornish & Co. The goods insured were in that store, he said he had brought down an application, a blank form, and said, here is a number of questions I want you to answer - He asked if the store was Brick, I said yes - He asked if we had iron shutters, I said yes, on the back and sides - none in front I believe - not certain

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about the sides - He also asked what kind of a roof we had - I told him I did not know certainly, that I never saw it - but I believed it was a metal roof - I also told him he could go up and examine it - He said it was of no great consequence - that it was a mere form, and that he would put it in as a metal roof - he also asked if the division wall extended above the roof, it being a double store - I told him I did not know - that I was never up there - I don't recollect now what answer he put in to the application - he also asked how many stores there were in the Building - I told him I could not tell him exactly - that I had no access to the rooms, at that time, in the fifth story - I think I then counted up four stores - we had one in the first floor - that, Tilsworth had one in his clothing store, in the 2nd story - that that was all the stores I could recall to my recollection till I got into the fifth story - there I knew that Darling had a store in front room in fifth floor - that there were other lodgers in same floor who had a store - and that those two were all that I could recall on that floor - he then asked how many tenants there were in the building - I ~~could~~ told him I could not tell exactly - that I would describe the building and give him the number of the tenants - I commenced at the bottom of the building - I told him the purposes the building was occupied for, and what the building contained - I

told him the east half of the cellar Dunham reserved for himself, and used for himself - for the storage of heavy groceries - that the west half of the cellar was occupied, one quarter by us for hardware and heavy stuff - that the other 3/4 was ~~occupied~~ used by Clark & Dater for storing Groceries, that we occupied the whole of the first or main floor for hardware and railroad furnishing - that 2nd story was occupied on east side by Titsworth for clothing and furnishing goods - 2nd story on west side was vacant, that 3rd story on east side was used by Titsworth for storage - 3rd story on west side was vacant 4th story we used on both sides for storage - hay forks, shovels, hoes &c. that 5th story was used for lodging rooms - I told him, I cannot tell you exactly how many tenants there are up there, I told him that on an average they are about half occupied, taking the year through - that at times some were vacant, and others occupied - that there were about 12 tenants, there were 24 rooms - said he, then you rent the whole building - I told him we did with the exception of that little portion which Mr. Dunham reserved - he said, oh well, if you control the whole building, I will call it one tenant - that is sufficient - and he put it down one tenant in the blank application - he remarked to me, it is a mere form, and one tenant will cover it - Mr. Ellsworth wrote the application and survey, and I think he wrote it

in lead pencil - the application was then signed and taken away by Mr. Ellsworth - this conversation all took place in the store on Water street - Application and survey shown to the witness -

I saw Ellsworth fill up the first handwriting - I have never seen him write but that once - state whether from the knowledge you there claimed, you can express a belief as to whether this is the handwriting of Ellsworth, or not?

To which question the defendants objected, and the Court then and there overruled the objection, and the defendants by their counsel, then and there excepted - I then noticed his handwriting - and I can express a belief on the subject, and I believe that this is in his handwriting - this paper is the application and survey in this case - I was clerk and book keeper of the plaintiffs at that time -

State how long after this conversation and application was filled up by the agent, was before he delivered the Policy based upon it?

To which question the defendants then and there objected, and the Court overruled the objection, and the defendants by their Counsel then and there, excepted -

We received that Policy of 28th August, either the same day, or the next, from the Agent, and paid the premium upon it -

State if you know, when the application in the present case, was made, and the Policy delivered -

I dont know except from the papers - I dont recollect whether I saw the second Application or Policy about the time they were made, in my capacity as bookkeeper -
State whether the Building in which the Goods insured were situated, remained in the occupation of the same persons, and was applied to same uses on the 26th of September, 1857. as they were at the time of the application of the 28th of August -
To which question, the defendants then and there objected, and the Court overruled the objection, and the defendants by their Counsel, then and there excepted -
I believe it did - I did not know of any change in the tenants, nor of the uses -
Were you in a situation to know? I always collected the rents, and should know as soon as anybody -
State the value of the stock in the premises, at the time of the fire - It was, as nigh as I could get at it, $40.000. About same at time of application -
E. W. Wadsworth was then sworn and examined on the part of the plaintiffs, and testified as follows - I am the Wadsworth, representated in the Form, in Policy - as Ellsworth & Wadsworth - they were Agents of defendants in months of August and September, 1857 - think he has now resigned the Agency - I had nothing to do with the agency myself - he used my name - I am acquainted with Ellsworth's handwriting - this application and survey are in his handwriting - have seen him write very often - this is also his signature - I am a son in law of him -

(The Application shown witness is the one in the present suit.) Policy in this case shown witness. This is filled up in his handwriting. (Objected to and overruled) In the summer of 1887. I think Ellsworth issued Policies immediately upon the application. He is not at present in this city. I could not say where he is. I'm who's handwriting is the Policy issued to Armstrong, Cornick & Co. To which question the defendants then and there objected and the Court overruled the same and defendants by Counsel, then and there excepted.

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This is in the handwriting of Ellsworth.

Wm. H. Bunker here cross-examined by defendants, and testified as follows.

State when that interview was, and who then owned the store you were in.

The conversation was on the 27th or 28th of August, 1887. Durham owned the store. had but one conversation of the kind at that time. Ellsworth made out that Insurance for Armstrong, Cornick & Co. and that application referred to an Insurance for them. of the application and insurance in this case, I have no personal knowledge.

Defendants by their Counsel then moved to strike out all the conversation testified to by the witness Bunker, in relation to the Application of Insurance in behalf of Armstrong, Cornick & Co. which motion was by the said Court overruled and the Counsel for the defendants then and there, excepted.

Did you tell Mr. Ellsworth at that time that lewd women were in the habit of congregating in that building? I did not — objected to by plaintiffs —
Defendants then offered to show that the rooms occupied by the tenants were resorted to at various times by lewd and vile women and for lewd purposes, and that the fact was not communicated to the agent — which was objected to by plaintiffs, and the objection was sustained by the Judge, to which the defendants then and there excepted —
The witness proceeded — I collected the rents of the building for Armstrong, Cornick & Co. and afterwards for Cornick, Crop & Co. Armstrong, Cornick & Co. bought them of Atkin Brothers & Co. — they paid part money and part land — they paid $5000, am sure of that — balance was paid in land — one half of $5000 at time of purchase, and the other half after 1st Feby gave between 16 & 17,000 for balance, paid the balance in Lands, the Goods were bought in March 1857. They, Armstrong, Cornick & Co. had an Insurance of $2,000. Philadelphia Merchants Insurance Co. and two others of $5.000 of defendants, There was another of $5000. in Astor Insurance Co. Another in Mut of $5000. another in Atlantic Fire Insurance Co. of $5.000 — Another of London, of $5.000 —
Re-direct — Plaintiffs had added to their stock from time to time previous to fire, a good many invoices of goods, arrived during the season, before fire — the

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agents of those other Companies live in Chicago—
the goods were destroyed by the fire, and they were
worth $40.000 in value, and might have exceed-
ed that—
Policy of Armstrong, Cornick & Co. offered in evidence
by plaintiffs, which was objected to by the defend-
ants, and objection overruled by the said Court,
and defendants then and there excepted—
The Policy of Armstrong, Cornick & Co. was then read
in evidence

The Howard

Fire and Marine

Insurance Company

Franklin Buildings— No 94. Walnut Street

$5,000. No 8—

By this Policy, The Howard Fire and Marine Insur-
ance Company of Philadelphia—
In consideration of Twenty-two Dollars, the receipt where-
of is hereby acknowledged, Do Insure Armstrong, Cornick
& Co. of Chicago, Illinois—
Against loss or damage by Fire, to the amount of Five
Thousand Dollars—on the following property, as described
in application and survey, No Eight, which is hereby
declared to be a part of this Policy, and a warranty on
the part of the assured, viz—
On Merchandize, Hazardous and not Hazardous, con-
tained in the Five Story Brick Building with metal
roof and iron shutters in rear and sides, occupied by

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the assured as dealers in Hardware, Cutlery, and Rail Road and car furnishing materials, situate on the South side of South Water Street, Nos. 181 & 183. between Clark and Dearborn Streets in the City of Chicago, Illinois—

Other Insurance permitted without notice until required—

And the said Company do hereby promise and agree to make good unto the said assured, their Executors, Administrators and Assigns, all such immediate loss or damage, not exceeding the amount hereby insured, nor three-fourths of the appraised cash value of any building above the foundation, destroyed or damaged, as shall happen by fire to the property as above specified, from the 28th day of August, One thousand eight hundred and fifty-seven, (at 12 o'clock at noon) unto the twenty-eighth day of December, one thousand eight hundred and fifty-seven (at 12 o'clock at noon) the said loss or damage to be estimated at a sum not exceeding in any case the price paid therefor, by the party hereby insured, nor above the actual cash value thereof, at the time the same shall happen, and to be paid within sixty days after notice, proof and adjustment thereof, in conformity to the conditions annexed to this Policy, unless the said Insurance Company shall within thirty days after the proof of such loss or damage, give directions for rebuilding or repairing, or if Merchandise, or personal property

restoring the same as before the fire— And in case any difference shall arise, touching such loss or damage, or the relative condition or value of said property when rebuilt, repaired, or restored, the Company may require it to be submitted to the judgment of arbitrators chosen in accordance with the 10th Article of Conditions annexed to this Policy, whose award in writing shall be binding on both parties— Provided always, and it is hereby declared, that this Company shall not
101 be liable to make good any loss by theft, or property stolen— nor for any loss or damage caused by the bursting or explosion of any steam-boiler or flues of any steam engine— nor for any loss or damage caused by the bursting or explosion arising from any other cause, or any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, or by any earthquake or hurricane— And provided further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this Company, and mentioned in, or endorsed upon this Policy, then this insurance shall be void and of no effect— and the assured hereby covenants and engages that the representation given in the application for this insurance, is a warranty on the part of the insured, and contains a just, full and true exposition of all the facts and circumstances in regard to the condition, situation and

value of the property insured; and that if any fact or circumstance shall not have been fairly represented — or if the said assured, or their Assigns, shall hereafter make any other insurance on the same property, and shall not give immediate notice thereof to the Secretary, and have the same endorsed on this ~~Policy~~ instrument or otherwise acknowledged by him in writing, then this Policy shall cease and be of no effect. The interest of the assured in this Policy, or in the property insured thereby, is not assignable, unless by consent of the Company manifested in writing, and in case of any transfer or termination of such interest, or any part thereof, either by sale or otherwise, whether prior or subsequent to any loss or damage, without such consent, this Policy shall thenceforth be void and of no effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage be entitled to demand or recover of this Company, any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property — without reference to the solvency, liability, or responsibility of other Companies insuring thereon — and whenever this Company shall pay any loss, the assured agrees to sign over all his right to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor at the charge and for account

of the Company if requested- Camphene, spirit gas or "burning fluid" when used in stores or warehouses as a light, subjects the goods therein to an additional charge- and permission for such use must be endorsed in writing on the policy- Gunpowder is expressly prohibited from being deposited, stored, or kept in any building insured, containing any goods or merchandise insured by this Policy, unless by special
193 consent in writing on the policy, and it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned building shall at any time after the making and during the continuance of this Insurance, be appropriated, applied, or used to or for the purpose of carrying on, or exercising therein, any trade, business or vocation, which would in any way increase the risk, or rates of insurance, or for the purpose of storing, keeping or vending therein, any articles, goods or merchandize other than of the kind and description mentioned in the application and this Policy, unless otherwise specially provided for, or hereafter agreed to by this company in writing, and 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 declared, that this insurance is not intended to apply to, or to cover any books of account, written securities, deeds, or other evidences of titles to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money

Countersigned at Chicago this twenty-eighth day of August 1857
Ellsworth & Wadsworth Agents

or bullion, jewelry, musical instruments, or spirituous liquors— It is also declared that this Policy is made and accepted in reference to the written and printed application whereon it is ~~issued~~ issued, and also to the conditions hereto annexed, which are hereby made a part of this Policy, and to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases, not herein otherwise specially provided for— And it is also agreed and declared by the parties aforesaid, that no condition, stipulation, covenant or clause herein before contained shall be altered, annulled or waived, or any clause added to these presents, except by writing endorsed hereon, or annexed hereto, by the President or Secretary, with their signatures affixed thereto—

Not valid until countersigned by Ellsworth and Wadsworth— Agents—

Seal

In witness whereof, the Common Seal of said Corporation is hereunto affixed, this twenty-eighth day of August, in the year of our Lord, one thousand, eight hundred and fifty seven—

Wm. H. Woods Secy. Percival M. Potts— President
R. G. Kensil. Treas. C. E. Spangler— Vice President—

Conditions of Insurance—

Persons desirous of making insurance, are to furnish the Secretary or Agent of the Company, with the following information—

1— Of what material the walls and roof of each Building are constructed, as well as the construction of the Buildings within fifty feet contiguous thereto—

2— Whether the same are occupied as private dwellings or how otherwise—

3— Where situated and how many stories high—

Each Building must be seperately insured—and in like manner a seperate sum insured on the property contained therein—

4— In the insurance of Goods, Wares or Merchandise, the building, or place in which the same are stored, or deposited, is to be described—also whether such goods are of the kind denominated hazardous or extra-hazardous, and whether any manufacturing is carried on in the premises— And if any person shall insure his or their building or goods, and shall cause the same to be described in the Policy otherwise than as they really are, such insurance shall be void and of no effect—or if, after the insurance is effected, either by an original policy, or by the renewal thereof, the risk shall be increased by the erection of Buildings, or by the use or occupation of the neighboring premises, or by any means whatsoever, it shall be the duty of the assured to give immediate notice thereof to this Company, pay such additional premium as they shall determine, and obtain their written consent to the continuation of this Policy—otherwise it shall be void—

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And if at any time the Company shall so elect, it sha

be optional with the Company to terminate the insurance, after notice given to the insured, or his representative, of their intention to do so - in which case, the company shall refund a rateable proportion of the premium - Any Building insured by this Company, becoming vacant or tenantless for a period of thirty days, notice thereof must be immediately given to the Secretary, and his consent thereto obtained in writing, otherwise this Policy shall be void -

5 - Property held in trust, or on commission, must be insured as such, otherwise the Policy will not cover such property - and in case of loss, the name of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interest therein - Goods on storage must be seperately and specifically insured - If the interest in the property to be insured be a leasehold or other interest, not absolute, it must be so stated in the Policy, otherwise it shall be void -

6 - No insurance, whether original or continued, shall be considered as binding, until the actual payment of the premium - or if the premium named in this policy, or any obligation which may be given for such insurance, or any part of it, remains unpaid, or the conditions of such obligation are not fully complied with, this Policy shall be void and of no effect -

7 - The interest of the insured in this Policy is not assignable, unless the assent of this Corporation be first obtained - notice of such assignment shall be given

before any loss may have happened, and this Company when so notified, may elect either to continue the insurance, and express the same by endorsement on this Policy, or refund a rateable portion of the premium, for the time of the risk unexpired, and cancel the Policy—

8— Notice of all other insurances, whether prior or subsequent to the date of this Policy, must be given the Company, and their consent thereto endorsed upon this instrument, or otherwise acknowledged in writing, otherwise this Policy shall be of no effect—

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9— 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 fail to do so, this Company shall not be held answerable to make good the loss and damaged sustained in consequence of such neglect— And it is mutually understood and agreed that there can be no abandonment to the insurers of the subject insured— and also that this Company or their Agents have the right to examine and take account of the property saved, and that every facility be given to enable them to do so—

If no notice of a loss is given within thirty days from the time when it happened, it shall be discretionary with the Directors to reject or allow the claim, or any part thereof— And no repairs in the premises shall be made after a fire, until notice is given to the Company, and

they have had an opportunity to view and examine—
18— Persons sustaining loss or damage by fire, shall forthwith give notice thereof, in writing, to the Company— And as soon thereafter as possible, they shall deliver to this Company a schedule or list of articles destroyed or damaged, stating who are the owners thereof— that at the time of, and immediately before the fire, the subject insured was in, upon, or at the place or location specified in the Policy, and covered thereby, and that the same was either destroyed or damaged (as the case may be) by fire— 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 insurances have been made on the same property— what was the whole cash value of the subject insured at the time of such loss, 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, and who were the occupants of such building, and when and how the fire originated, so far as they know or believe, or have any information— When merchandise, or other personal property, is partially damaged, the insured shall forthwith cause it to be put in as good order as possible, assorting and arranging the various articles, according to their kinds— and cause a list or inventory of the whole to be made— The damag-

shall then be ascertained by the examination and appraisal of each article by two disinterested appraisers, under oath, one chosen by the Company and one by the insured, and in case of their disagreement, they shall nominate a third person, to act as umpire between them and the award in writing, under the hands of such appraisers, or any two of them, shall be binding and conclusive as to the amount of damages upon both parties to this Policy - and if this Company or their Agent shall require such an examination or appraisement, it shall be so submitted, otherwise this Company will not be liable for any loss or damage under this Policy -

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The expense of ascertaining and proving any loss that may occur, and also of forwarding such proofs to the office of the Company, shall be paid by the party insured And said Company shall in no case be deemed to have waived a full, literal and strict compliance with, and performance of, each and every of the terms, provisions, conditions and stipulations in this Policy contained and hereto annexed, to be performed and observed by, and on the part of the insured, and every person claiming by, through or under them, unless such waiver be express, and manifest in writing under the signature of the Secretary of said Company, before any failure on the part of the insured, or anyone claiming by, through or under him, to comply with, and observe and perform the same, shall have occured. And if any Agent of this Company, in the transaction of their business shall assume to violate these

condition, such violations shall be construed to be the act of insured, and shall render void this Policy—
And whenever required, the insured, or person claiming, shall produce and exhibit the books of account, bills of purchase, or duplicates thereof, and other vouchers, to the insurers or their Agent, at the office of this Company, in suppot of the claim, and leave them with this Company a sufficient length of time to permit extracts and copies thereof to be made—
And shall also, if required, submit to an examination under oath, by the Agent or attorney of this Company, and answer all questions touching his, her or their knowledge of anything relating to such loss or damage, and subscribe and make oath to such examination, the same being reduced to writing—And until such proofs, examinations, declarations, certificates and exhibitions are produced, and permitted by the claimant, when required as above, the loss shall not be payable—
Any misrepresentation or concealment, fraud or false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against this Company, under the within Policy—
11. In case of any loss or damage by fire to the property insured, it shall be optional with the Company to replace the articles lost or damaged, with others of the same kind and equal goodness, and to rebuild or repair the building or buildings within a reasonable time, giving notice of their intention so to do, within

sixty days after having received the preliminary proofs of loss, required by these conditions—
When premises have been on fire, or an attempt made by an incendiary to fire the same, assured must give immediate notice to this office, and on failure to do so, this Policy will be void—
This Company shall not be liable for accidents accruing by fire occasioned by gas-burners, coming in contact with goods, displayed in shop windows, or any loss accruing therefrom— 111
12— Payment of losses shall be made at the end of sixty days after the loss shall have been ascertained and proved, and the aforesaid conditions fully complied with—
13— It is furthermore hereby expressly provided, that no suit or action of any kind, against this 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 six months next after the cause of action shall have accrued—
14— Insurances once made may be continued for such further time as may be agreed upon, the premium required therefor being paid and endorsed on this Policy, or a receipt given for the same— and all insurances, original or renewed, shall be considered as made under the original representations, in so far as it may not be varied by new represen-

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tations, which in all cases, it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings, or by any change of interest or ownership— And should there, during the life of the Policy, an incumbrance fall, or be executed upon the property insured, sufficient to reduce the Real interest of the insured in the same to a sum only equal to, or below the amount insured, or if it shall be levied upon or taken into possession or custody under an execution or other proceeding at law or equity, and the assured shall neglect or fail to obtain consent of the Company thereto, then and in that case, the Policy shall be void—

The above was all the evidence given in the case— The evidence being closed, the plaintiffs asked the Court to give the following instructions—

Canick, Trofs & Co. use &c.
vs
Howard F. & M. Ins. Co.
} Covenant—

Plaintiffs Instructions

The Court is asked to instruct the Jury, on behalf of Plaintiffs— as follows viz—

1 First— That if the Jury believe from the evidence that at the time of making out the application, in this case, the defendants agents had a full knowledge of all the facts as to the number of occupants in the buildings in which the goods insured were situated, and the use made by each occupant

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of that part of the buildings occupied by each— then the omission to state those facts in the application, will not vitiate or avoid the Policy—

2nd " Parol evidence is admissible to show that all these facts were communicated to the Agents of the Company at, or before the time of making this application, and notice to the agents is notice to defendants—

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3rd " If the Jury believe from the evidence, that defendants furnished Messrs. Ellsworth & Wadsworth as their Agents, with blank Policies executed and sealed by it, and authorized them to receive applications, and make surveys, and upon the facts, circumstances, and the representations to judge of the risk, and to fix the amount of Premium thereon— and that said agents received this application and made out the same, and the survey in this case, and fixed and received the Premium paid thereon, and delivered the Policy sued on for defendant, and with a full notice and knowledge of all the facts and circumstances as to the number of persons occupying apartments in these Buildings— and the uses made of these apartments by such occupants— Then plaintiffs are entitled to recover—

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4th " — If the Jury believe from the evidence that Plaintiffs communicated to defendants agents, before the application and survey were made out,

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all the facts, and circumstances as to the number of tenants and occupants of the same— and that defendants Agents, with such knowledge and notice, made out the application and survey, and filled up the Policy for defendants— and 4th fixed the Premium thereon paid, and delivered the same thus filled up, and by the authority of defendants, then Plaintiffs are entitled to recover—

3th " — The Court are instructed to charge the Jury— That the answer to the 7th " Interrogatory, in the survey, "One" tenant, is not to be understood, as asserting that the building was not occupied by other persons, and the assured was not required by the application or survey, to disclose the number of occupants— and if the Jury believe from the evidence that the building was let by Dunham the owner to Armstrong, Cornick & Co. alone, as lessees, and 5th the several persons shown to be in occupancy of rooms were sub-lessees of the tenants, the representation in the survey as to the number of tenants, is sustained, and the Jury will find for the Plaintiffs, on such issues—

6th Sixth— The Court will charge the Jury— That the answer to the 7th " interrogatory in the survey, as follows— to wit— "as a hardware, Cutlery Rail Road and Car Furnishing store, connected on either side with brick buildings", is not to be under—

stood as asserting that or no part of the building was used for any other purpose, but that the portion occupied by Plaintiffs, was used for the purpose as stated in the answer—

If the Jury believe from the evidence that the answer in this respect was true, then they will find for the Plaintiff on that issue—

Seventh— The Court will charge the Jury— That the following clause of the Policy, "to wit" The following property as described in application and survey No. 14— is hereby declared to be a warranty on the part of the assured viz— on Merchandise, hazardous and not hazardous, contained in the five story brick building with metal roof and iron shutters, in rear and sides, occupied by the assured as dealers in Hardware, Cutlery and Rail Road and car Furnishing materials, situate on the South side of South Water street, Nos. 131 and 133. between Clark and Dearborn streets—" make the description of the property as therein described and contained, a part of the Policy and a warranty on the part of the assured, and does not incorporate the application and survey No 14. into said Policy, as a part thereof, nor does it make them, or either of them, a warranty on the part of the assured—

Eighth— That the following clause of the Policy, to wit— "And is moreover declared that this Policy is made and accepted in reference to the written

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"and printed application whereon it is issued,
"and also to the conditions hereto annexed, which
"are hereby made a part of this Policy, and to be used
"and resorted to in order to explain the rights and
"obligations of the parties hereto, in all cases not here-
"in otherwise specially provided for"- incorporated
the application No. 14. and the conditions annexed
to said Policy into, and made the same parts of the
Policy in this case, but did not make the represen-
tation in said application, nor the conditions an-
nexed to said Policy warranties-

9th Ninth- The clause in the survey No 14. as follows
to wit- "It is expressly agreed to on the part of
"the applicant, that this survey as well as the
"diagram of the premises herewith, shall form
"part and be a condition of this Insurance"- is in-
corporated into and made a condition of the Poli-
cy of Insurance in this case, as a representation
only, and not as a warranty-

10th 10th The clause in the survey No 14. as follows, to wit,
It is expressly agreed to on the part of the applica-
tion, that this survey as well as the diagram of
the premises, shall form part of, and be a condi-
tion of this Insurance", form no part nor condi-
tion of the Policy in this case-

11th Eleventh- There is no clause in the Policy of Insur-
ance, nor provision which incorporates the survey
No. 14. into the Policy and makes the same a part

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thereof, and no provision or agreement in the application or survey will have the effect to incorporate the same into the Policy—

12th Twelfth—That the Policy may be void as an insurance on the building, and still may be valid

117 as to the merchandise described in the application and Policy, and that although the Jury may believe from the evidence, that the number of tenants, and the uses of the building in which the merchandise insured was situated, may not have been fully represented and described in the survey, yet if they believe from the Evidence, that the merchandise insured and the occupation by the assured of the building in which the same was situated, were correctly and fully described in the application upon which the Policy sued upon in the case, was issued—then they will find for the plaintiff—

13th Thirteenth—That a representation although untrue, will not avoid a Policy, unless the same is fraudulent and injurious in fact to the insurers—

Which said Instructions, the Judge severally declined to give—to which refusal the plaintiffs then and there excepted—

And thereupon the Judge then and there gave the following instructions to the Jury on the behalf of the plaintiffs, to wit—

1st 1st—That if the Jury shall believe from the evidence

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1st Instruc

that at the time of the making of the application in this case, the plaintiff gave full and exact information to Ellsworth the Agent, as to the number of the tenants in the occupancy of the building in question, and the use thereof by each - that with such information furnished, the agent himself filled up the application in question as the same now is, and induced, by mistake or otherwise, the plaintiff to sign the application and survey - then though the Jury should find from the evidence that the building was occupied by more tenants, and for other business than named in the application, the defendants are estopped from making such objection to prevent fraud and injustice, and the plaintiffs will be entitled to recover -

To which instruction so given by the said Judge to the Jury, the defendants by their Counsel, then and there excepted -

The said Judge also gave to the Jury, on the part of said plaintiff - the following instruction -

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2nd - Parol evidence is admissible to show that all the facts are communicated to the agents of the Company, at or before the time of the making of the application in question, and notice to the agent is notice to the defendants -

To which instruction the defendants by their Counsel then and there excepted -

The said Judge then and there further instructed

the Jury as follows, on the part of the plaintiff—

3rd 3— That if the Jury believe from the evidence, that at the time of making out the application in this case, the defendants' agent had a full knowledge of all the facts as to the number of occupants in the building, and the use made by each occupant of that part of the building occupied by each that the agent upon such information, filled up blanks, the application and survey are evidence and produced, the plaintiffs' signature thereby representing that the same were mere forms, or otherwise— that the plaintiffs signed the same in good faith, believing that the facts were correctly stated therein— then the agent's omission to state the facts ~~fully~~ truly, will not avoid the Policy, or conclude the plaintiff from alledging the truth.

To which instruction so given, the said defendants by their Counsel, then and there excepted.

The said Judge then and there further instructed the Jury, on the part of the plaintiffs, as follows—

5th 5th. The Court is asked to instruct the Jury that by the terms of the insurance, the money became due and payable within sixty days after proof of the loss is notified to the Company, and that the same will bear interest at the rate of six per cent per annum, from that time until this date—

To which instruction so given by the Judge the said defendants by their Counsel, then and there excepted.

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6— The Court then and there further instructed the Jury on the part of the plaintiff, as follows—

6th "If the Jury believe from the evidence, that the insurance policy sued upon in this cause, was made, and a loss has been suffered as therein set forth, and that the money insured is due and unpaid— and that the proof of loss was duly made and notified on the 26th of October, 1857. or on some other day— then the Jury will give interest on the amount they may find due and unpaid, at the rate of six per cent from and after the expiration of sixty days after the proofs of loss are shown by the evidence to have been furnished—

To which instruction as given as aforesaid, the said Counsel for defendants did then and there, except— The defendants by their Counsel, then and there prayed the said Judge to give the following Instructions to the Jury on the behalf of said defendants—

1st Defts 1st If the Jury believe from the evidence that the premises described in the Policy sued upon, or any part thereof, were at the time of the issuing of said policy, occupied by other tenants than said plaintiffs, then said policy is void, and the plaintiffs cannot recover in this action—

Which said Instruction as prayed the said Judge refused to give, and in lieu thereof, gave the following—

Substituted "If the Jury believe from the evidence that the premises described in the policy sued upon, or any part

thereof, were at the time of the issuing of said policy, occupied by other tenants than said plaintiffs, then said policy is void and the plaintiffs cannot recover in this action, unless the proof establishes to the satisfaction of the Jury, a state of facts estopping the defendants from taking advantage of the condition in the policy.

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To the refusal of the said Judge to instruct the Jury as above requested, and also to the instruction given by the said Judge, and by him amended and added to as above stated, the said defendants did by their Counsel, then and there, except.

The defendants then and there further prayed the said Judge to instruct the said Jury, on the behalf of said defendant, as follows.

2. If the Jury believe from the evidence that a part of the premises described in said policy, was occupied, at the time of issuing said policy, as a wholesale clothing store, then said policy is void, and the plaintiffs cannot recover in this action.

And the said Judge then and there refused the instruction as above prayed for, but gave the same with the following amendment, alteration, addition and qualification, to wit. "unless the proof establishes to the satisfaction of the Jury, a state of facts estopping the defendants from taking advantage of the condition in the policy."

To the refusal of the said Judge to instruct the

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Jury as above prayed, and also to the giving of said instruction as amended, added to and qualified by the said Judge, and to each of them, the said defendants did then and there except—

The said defendants then and there prayed the said Judge further to instruct the said Jury, on the behalf of said defendants, as follows—

3— If the Jury believe from the evidence that the upper rooms of the premises described in said policy, were at the time of issuing said policy, rented to parties other than the said plaintiffs, for sleeping rooms or any other purpose, then said policy is void, and said plaintiffs cannot recover—

Which instruction as above prayed for, the said Judge then and there refused to give, and in lieu thereof, gave the same with the following additions, alteration and qualification thereto attached as follows— "Unless the proof establishes to the satisfaction of the Jury a state of facts estopping the defendants from taking advantage of the condition in the policy"—

To the refusal of the said Judge to give the said instruction as above prayed for, and also to the giving of the same with the amendment, alteration and qualification by said Judge, as above set forth, and to each of them, the defendants by their Counsel, then and there excepted—

The defendants then and there further prayed the

said Judge further to instruct the said Jury on the part of the said defendants, as follows-

123 4- If the Jury believe from the evidence that at the time the application for insurance in this case, was made, and the policy issued, there were more tenants in the building than is stated in the application, then the plaintiffs cannot recover, unless the Jury shall be satisfied from the evidence that the defendants when they issued the policy, knew of the true number of tenants in said building, at the time the policy in this case was issued, and the communications made to the agent at the time an application was made for another policy by Armstrong, Cornick & Co. are not of themselves sufficient proof of such fact-

The Judge refused to give said instruction as prayed for, but gave the same after first erasing the following lines, to wit- "and the communications made to "the agent at the time an application was made "for another policy by Armstrong, Cornick & Co. are not "of themselves sufficient proof of such fact"-

To the refusal of the said Judge to instruct the Jury as prayed for by said defendants, and to the giving of the same as altered by said Judge, the defendants by their Counsel, then and there excepted-

And the said defendants then and there prayed the said Court, further to instruct the said Jury, as follows-

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5– If the Jury believe that at the time of the application and issuing of the Policy in the case, the building in which the goods were situated were at the time the policy was issued, used for other purposes than those mentioned in the application, the plaintiffs cannot recover unless such fact was communicated to defendants or known by them at the time of the application and issuing of the policy, and the communications made to the agent at the time of the application, by Armstrong, Cornick & Co. are not of themselves sufficient proof of such fact–

And the said Judge then and there refused to give such instruction, so as aforesaid prayed for– but erased the following part thereof– "and the communications made to the agent at the time of the "application by Armstrong, Cornick & Co. are not of "themselves sufficient proof of such fact–" and gave the balance of said instruction in lieu of the one prayed for–

To the refusal of the said Judge to give the instruction prayed for, and also to the giving of the same as altered, the said defendants by their Counsel, then and there excepted–

The Defendants further prayed the said Judge to instruct the Jury as follows–

7– There being no evidence that the defendants did not restore the property alledged to be lost at the

fire, according to the conditions of the Policy in this case, the plaintiffs are not entitled to recover the said Judge refused to give said instruction, and the said defendants then and there excepted.

7— If the Jury belive from the evidence, that at the time the application for the insurance in this case, was made, and the policy was issued, the plaintiffs falsely warranted the condition and situation of the premises, as to the number of the tenants in said building, or the purposes for which they, or either of them, or any part of them, were used, then the plaintiff cannot recover, and the Court charge the Jury as matter of law that each and every statement in the application is a warranty—

To the giving of each and all of which instructions, the plaintiffs then and there excepted—

And the Jury empannelled to try said cause then and there gave their verdict against the defendants for $.

The amount of said policy and interest—

And therefore the said defendants filed the following motion for a new trial in said cause

"And now comes the defendants by E. A & J. Van Buren their attorneys, and move the Court for a new trial, and an arrest of judgment on the following grounds—

1st— The Court erred in overruling the objection

to the admission of the Policy in evidence, and in deciding that an action of covenant could be maintained upon the policy—

2— The Court erred in overruling the several objections to the testimony of William H. Bunker in relation to the conversation with Ellsworth—

3— The Court erred in overruling the motion to strike out the testimony of Bunker in relation to his conversations with Ellsworth—

4— The Court erred in giving the following Instructions on the part of the plaintiffs to wit, No 1— 2— 3 and 5—

5— The Court erred in refusing to give the testimonies of defendant, to wit, Nos 1— 2— 3— 4— 5— 6— and 7— and in making the amendments and alterations in Nos. 1— 2— 3— 4— 5— and 6—

That the verdict was against law—

6— That the verdict is against evidence—

7— The judgment should be arrested because it is not alledged in the declaration that the plaintiff had not replaced the goods, and had not complied with the terms of their policy as therein stated—

The Court overruled the said motion for new trial, and also the motion in arrest of judgment— to each decision of said Judge, the said defendants then and there excepted—

And inasmuch as the said several matters so objected to and insisted upon on the part of the said Howard Fire & Marine Insurance Company

do not appear by the record of the verdict aforesaid, the said Counsel for said Howard Fire & Marine Insurance Company did then and there propose their aforesaid exceptions to the opinions of the said Judge, and requested him to put his seal to this bill of exceptions - containing the several matters so produced and given in evidence on the part of the said defendants as aforesaid, according to the form of the Statute in such case made and provided - And thereupon the said Judge did put his seal to this bill of exceptions, pursuant to the aforesaid Statute in such case made and provided -

George Manierre (Seal)

Judge 7th Judicial Circuit - Ills -

And afterwards, to wit, on the Third day of June in the year last aforesaid, the said defendant by its said attorneys, filed in the office of the clerk of the Court aforesaid, its certain appeal bond in said cause, in the words and figures following, to wit -

Know all men by these presents, that the Howard Fire and Marine Insurance Company of Philadelphia as principal, and William H. Stow and William B. Ogden of the City of Chicago in the State of Illinois, as sureties, are held and firmly bound to Samuel H. Cornish, Francis C. Cross, and Robert C. Clark, in the sum of Ten thousand, eight hundred dollars, to be paid to the said Samuel H. Cornish, Francis C. Cross and Robert C. Clark, their

heirs, executors, administrators, or assigns, to which payment well and truly to be made, and done, we bind ourselves, our heirs, executors and administrators or assigns, jointly and severally, firmly by these presents- sealed with our seals and dated this 30th day of May A.D. 1859-

Whereas a judgment was rendered in the Circuit Court of Cook County, on the seventh day of May A.D. 1859. of the April Term of said Court, 1859- in favor of the said Samuel H. Cornick, Francis C. Cross and Robert C. Clark against the Howard Fire and Marine Insurance Company of Philadelphia, for Five thousand, three hundred and ninety four dollars damages, and twenty six dollars, sixty cents costs, and whereas the said Howard Fire and Marine Insurance Company have prayed an appeal to the Supreme Court,-

Now the condition of this obligation is such- that if the said Howard Fire and Marine Insurance Company shall pay the judgment, costs and interest and damages, in case the judgment shall be affirmed. and shall also duly prosecute their appeal bond, then this obligation to be void otherwise of force-

Witness our hand and seals this day and year above written-

Sealed and delivered in presence of

W. B. Ogden (Seal)

W. H. Stow (Seal)

Charles A Duy

The Howard Fire & Marine Insurance Company of Philadelphia, By E. A. & J. Van Buren, its atty in fact — (Seal)

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 writ pleadings, proceedings, bill of exceptions appeal bond & proceedings of record in a certain cause lately pending in said Court on the Common law side thereof, wherein Samuel H Cornick Francis C. Cross & Robert C Clark were plaintiffs and the Howard Fire & Marine Insurance Company were Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Sixteenth day of November A. D. 1859

Wm L. Church Clerk.

Fee $30.50

128401

$5.00 bd. clk.

Sup Court

Howard Fire & Marine
Ins Co. appts
vs

Samuel Cornick
et al ~~appellees~~

Record

E. A. & I. Van Buren
Attys for appts

Filed March 16. 1860
L. Leland
Clerk.

Supreme Court of the State of Illinois
Third Grand division

The Howard Fire & Marine Insurance Company of Philadelphia vs Pltfs in Error Samuel H Cornick. Francis C Cross. & Robert C Clark — — — Defts in Error	April Term 1860

And now at this day, to wit, in the Term of April 1860 before the Judges of the Supreme Court of the State of Illinois, comes the said. The Howard Fire & Marine Insurance Company by E & A & J Van Buren their Attorneys & say. that in the Record & proceedings aforesaid, and also in giving the judgment aforesaid. there is manifest error in this. to wit. The declaration aforesaid and the matters therein contained. are not sufficient in law for the said Samuel H Cornick. Francis C Cross & Robert C Clark to have or maintain their aforesaid action against The Howard Fire & Marine Insurance Company. There is also Error in this. to wit. That by the Record aforesaid it appears. that the judgment aforesaid in form aforesaid given. was given for the said Samuel H Cornick. Francis Cross & Robert C Clark against the Howard Fire & Marine Insurance Company

whereas by the law of the Land. the said judgment ought to have been given for the said the Howard Fire & Marine Insurance Company against the said Samuel Herrick Francis Crosp. & Robert G Clark. And the said Howard Fire & Marine Insurance Company prays that the judgment aforsaid for the Errors aforesaid & other errors in the record & proceedings aforesaid may be reversed annulled & altogether held for nothing. And they may be restored to all things which they have lost by reason of the said judgment And the said Howard Fire & Marine Insurance Company assign the following special causes of Error to wit,

1 The Judge erred in overruling objection to the introduction of the Policy of Insurance in Evidence.

2. The Judge erred in deciding, that an action of Covenant could be maintained on the Policy in this case. the same not being under seal.

3. The Judge erred in admitting the testimony of Wm H Bunker. And in allowing Evidence to contradict the

representations & warranty made by the assured in the Policy. conditions & application.

4. The Judge erred in overruling the motion to strike out the testimony of Bunker.

5. The Judge erred in allowing evidence to contradict the warranty in the Policy. conditions & application, or to show a waiver of any of them.

6. The Judge erred in giving the following instructions for plaintiff to wit, Nos 1-2-3 & 6

7. The Judge erred in refusing to give the following Instructions of defendants as proposed by defendants. to wit, Nos 1-2 3-4-5 & 7

8. The Judge erred in adding to and amending the following Instructions of defendants, to wit, Nos 1-2-3-4-5 and in giving the same as amended. ~~and in refusing~~

9 The Judge erred in refusing to grant a new trial on Motion of defendants.

10. The Judge erred in overruling the

motion of defendants to arrest the Judgment.

11. The Judgment is against law & also against the evidence

E. L. A. S. Van Buren
Attys for Pltfs in Error

In nullo est erratum
Scates McAllister & Jewett
& J Clapp for Defendants

Supreme Court 101

Howard Fire And Marine Insurance Co
Pltfs in Error
vs
Samuel T & Carrick
et al

Assignment of Errors
Filed April 18 1860
L. Leland
Clerk