

No. 11908

Supreme Court of Illinois

Dix, et al

vs.

Mercantile Ins. Co.

71641  7

107. — 167

Joel H. Dix & others  
vs

The Mercantile  
Insurance Company

107

11908

1859

Be it Remembered that recd. s. to wit. on  
the 27<sup>th</sup> day of June A D 1857. Joel H Dix, Horatio  
G Sinclair & George J Harris to the use of James E  
Southworth, Albert Hlauson, Talous Southworth  
and Harvey Harrington Jr by C Bentley and  
Arnold & Larned their attorneys filed in the  
Office of the Clerk of said Court their certain  
Bond for costs and preceps which are in the  
words and figures following to wit:

Cook County Circuit Court  
October Term 1857

Joel H Dix, Horatio G Sinclair &  
George J Harris to the use of  
James E Southworth, Albert Hlauson  
Talous Southworth & Harvey Harrington Jr  
vs  
The Mercantile Insurance Company } Security for costs

I do hereby enter my-  
self security for costs in this cause, and acknowledge  
myself bound to pay, or cause to be paid all costs  
which may accrue in this action, either to the opposite  
party, or to any of the Officers of this Court, in  
pursuance of the Laws of this State  
Dated this 22<sup>d</sup> day of June A D 1857

C Bentley

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable

*George Maniere*

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 *twelfth* day) of

*October* in the year of our Lord one thousand eight hundred and

*Fifty Seven* and of the Independence of the said United States the

*Eighty Second*

Present, Honorable

*George Maniere*

Judge of the 7th Judicial

Circuit of the State of Illinois.

*Charles Haven*

States Attorney.

*John S. Wilson*

Sheriff of Cook County.

Attest;

*W. S. Church*

Clerk.

Book County Circuit Court  
October Term 1857.

Joel McDix, Horatio G Sinclair & George J Harris to the use of James E Southworth, Albert Slauson Valorus Southworth and Harvey Harrington Jr vs

Assumpsit  
Damages \$6000.

The Mercantile Insurance Company

The clerk will please issue Summons in above cause returnable to the October Term next.  
C Bentley & Arnold & Larned  
Plffs attys.

And afterwards to wit, on the same day, to wit, the 27<sup>th</sup> day of June A D 1857. there was issued out of the Office of the Clerk of said Court, 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, -

Circuit Court of Book County  
State of Illinois }  
County of Book } pp.

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

We command you that you summon The Mercantile Insurance Company, if he shall be found in your County, personally to be and appear before

4

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 October next to answer unto Joel H. Dix, Horatio G. Sinclair and George J. Harris for use of James E. Southworth, Albert Stauson, Valorus Southworth and Harvey Hainington Jr. in a plea of trespass on the case on promises to the damage of the said Plaintiff as is said, in the sum of six thousand Dollars, -

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

L.S.

Witness William L. Church Clerk of our said Court and the Seal thereof at Chicago aforesaid this 27<sup>th</sup> day of June A.D. 1857.

Wm L Church Clerk

And afterwards to wit, on the 10<sup>th</sup> day of October in the year last aforesaid, said writ was returned into the Office of the Clerk of said Court by said Sheriff endorsed as follows to wit, -

Served this writ on Thomas Richmond Secretary of the within Insurance ~~named~~ company by delivering a copy hereof to him the 21<sup>st</sup> of Sept 1857. - The President of the within named Insurance company not found in my County, Oct-10 1857.

Fees paid by Refpalt \$115

John L. Wilson Sheriff  
By John H. Dart Deputy

5

And afterwards to wit on the 2<sup>d</sup> day of October in year last aforesaid, said Peffe by their attorney aforesaid filed in the Office of the Clerk of said Circuit Court aforesaid their certain narration which is in the words and figures following to wit,

In the Circuit Court of Cook County  
Of the October Term A.D. 1857.

State of Illinois }  
Cook County } ss.

Joel H. Dix, Horatio G. Sinclair & George J. Harris, Plaintiffs in this suit (who sue for the use of James E. Southworth, Albert Slauson Valorus Southworth and Harvey Farrington), carrying on business under the name & style of Southworth Slauson & Co) by Cyrus Bentley their attorney complain of the Mercantile Insurance Company, a corporation established and existing under the laws of the State of Illinois defendant in this suit, who have been summoned &c. of a plea of trespass on the case upon promises, For that whereas, here tofore to wit, on the twenty seventh day of September A.D. 1856 at Chicago, to wit, at the County of Cook aforesaid, by a certain instrument or Policy of insurance then and there made, under the hand of Cyrenius Beers the President and Thomas Richmond the Secretary of the said Corporation and countersigned by Justin Parsons the agent of the said Company at Chicago aforesaid, the said Cyrenius Beers

6 Thomas Richmond and Justin Parsons, acting and being  
duly authorized for and on behalf of the said Corporation  
the said Mercantile Insurance Company in consid-  
eration of Twenty seven dollars to them paid  
the receipt whereof was thereby acknowledged, did  
thereby agree to insure the said plaintiffs by their  
then name or style of Dr's Sinclair & Harris, against loss  
or damage by fire to the amount of two thousand  
dollars on their                      of groceries, (meaning their stock  
of groceries) contained in the Brick building, situated &  
known as to 43 South Water Street city of Chicago  
Ill. And the said Corporation thereby promised  
and agreed to make good unto the said assured  
their Executors administrators and assigns, all  
such immediate loss or damage, not exceeding  
in amount the sum insured as should happen  
by fire to the property as above specified from the  
27<sup>th</sup> day of September one thousand Eight hundred  
and fifty six (at noon) unto the 27<sup>th</sup> day of  
September one thousand eight hundred and  
fifty seven (at noon) the said loss or damage,  
to be estimated according to the true & actual  
cash value of the property at the time the same  
should happen, and to be paid within sixty days  
after notice and proof thereof made by the  
assured and received at their office in conform-  
ity to the conditions annexed to the said policy.  
Provided always and it was thereby declared  
that the said Corporation should not be liable

7 to make good any loss by theft, or any loss or damage by fire which might happen or take place by means of any invasion, insurrection, riot or civil commotion or of any military or usurped power, and further that in case the assured should have already any other assurance against loss by fire on the property thereby assured, and not notified to the said Company and mentioned in or endorsed upon the said Policy, then the said Assurance should be void and of no effect, and if the said assured or their assigns, should hereafter make any other assurance on the same property and should not with all reasonable diligence give notice thereof to the said Company and have the same endorsed on the said Policy or otherwise acknowledged by them in writing, the said Policy should cease to be of no further effect. But it was hereby also declared that other Assurance was permitted without notice to the said Company until required, and in case of any other Assurance upon the property thereby insured, whether prior or subsequent to the date of the said Policy, the assured should not in case of loss or damage be entitled to demand or receive of the said Company any



greater portion of the loss or damage sustained than the amount thereby insured should bear to the whole amount insured on the said property, and it was by the said Policy agreed and declared to be the true intent & meaning of the parties thereto, that in case the above mentioned premises should at any time after the making and during the continuance of the said Insurance, be appropriated applied or used by or for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra hazardous or specified in the Memorandum of special rates in the Conditions annexed to the said Policy, or for the purpose of storing using or packing therein any of the articles, Goods or Merchandise in the Conditions aforesaid denominated hazardous or extra hazardous or included in the Memorandum of special rates, unless therein otherwise specially provided for, or hereafter agreed by the said Company in writing & added to or endorsed upon the said Policy, then & from thenceforth so long as the same should be so appropriated, applied used or occupied, the said Policy should cease and be of no force or effect.

9

And it was moreover declared that the said Policy was made and accepted in reference to the conditions thereto annexed, which were to be used and resorted to in order to explain the rights and obligations of the parties thereto in all cases not therein otherwise especially provided for, as by the said Instrument or Policy of Insurance, reference being thereunto had will more fully appear, And the said Plaintiff in fact say that the conditions annexed to the said Policy are (amongst others) as follows to wit.

4. Applications for Insurance must specify the construction and material of the building to be insured, or containing the property to be insured, by whom occupied, whether as a private dwelling or how otherwise, its situation with respect to contiguous buildings and their construction and materials, whether any manufactory is carried on within or about it; and in case of goods or merchandise whether or not they are of the description denominated hazardous or Extra hazardous or included in the memorandum of special rates, and a false description by the insured, or of a building, or of its contents or omitting to make known any fact or feature in the risk which increases the hazard of the same, or in a valued policy or over valuation shall render absolutely void a policy issued upon such

10 description or valuation, and if any survey plan or description of the property herein insured is referred to in this policy, such survey plan or description shall be deemed and taken to be a Warranty on the part of the assured.

If after insurance is effected upon any building or goods in this Office either by the original policy, or by the renewal thereof the risk shall be increased by any means whatsoever within the control of the assured, or if such building or premises shall with the assent of the assured be occupied in any way <sup>as to</sup> render the risk more hazardous than at the time of such insuring such insurance shall be void and of no effect. If during the insurance the risk be increased by the erection of buildings or by the use or occupation of neighboring premises or otherwise, or if for any other cause the Company shall so elect it shall be optional with the Company to terminate the insurance after notice given to the assured or his representative of their intention so to do, in which case the Company will refund a rateable portion of the premium.

7 Policies of insurance subscribed by this Company shall not be assignable without the consent of the Company, expressed by endorsement made thereon. In case of assignment without such consent whether of the whole Policy or of any interest in it, the liability of the company in virtue of such

11 policy shall thenceforth cease, and in case of any sale transfer or change of title in property insured by the Company or of any undivided interest therein, such insurance shall be void and cease.

8. This Company will not be liable for loss or damage caused by lightning except that which results from fire that may ensue herefrom nor for any loss either by fire or otherwise occasioned by the explosion of a Steam boiler, or occasioned by lamp-glass, or by the explosion of Gunpowder.

11 All persons insured by this Company and sustaining loss or damage by fire are forthwith to give notice thereof to the Company and as soon after as possible to deliver in a particular account of such loss or damage signed with their own hands and verified by their oath or affirmation they also shall declare on oath whether any and what other insurance has been made on the same property, what was the whole value of the subject insured, what is their interest therein in what general manner, (as to trade manufacturing, merchandises or otherwise) the building insured, or containing the subject insured and the several parts thereof now occupied at the time of the loss, and who were the occupants of such building, and when and how the fire originated so far as they know or believe, and procure a

12 certificate under the hand of a magistrate or Notary public (most contiguous to the place of the fire and not concerned in the loss as a creditor or otherwise or related to the insured or sufferers), that he is acquainted with the Character, and the circumstances of the person or persons insured, and has made diligent enquiry in to the facts set forth in their Statement and knows or verily believes that he or she or they really and by misfortune and without fraud or evil practices hath or have sustained by such fire loss or damage to the amount therein mentioned.

And also if required shall produce their books of account and other proper vouchers, and shall also if required submit to an Examination under oath by the agent or attorney of the Company and answer all questions touching his <sup>her</sup> ~~own~~ or their knowledge of any thing relating to such loss or damage or to their claim thereupon and subscribe such Examination the same being reduced to writing; And until such proofs declarations and certificates are produced and examination if required the loss shall not be deemed payable; also if there appear any fraud or false swearing, the insured shall forfeit all claim under this policy, a copy of the within portion of the policy to be given in the affidavit of the claimant in all cases.

12 Payment of losses shall be made in Sixty days after the loss shall have been ascertained and proved and the proof received at the Office of which <sup>said</sup> Instrument

or policy of assurance, And the conditions thereunto annexed, the said Defendants afterwards to wit, on the day and year first aforesaid at the County aforesaid had notice, and thereupon afterwards to wit, on the day and year last aforesaid at the County aforesaid, in consideration that the said Plaintiffs at the special instance and request of the said Defendants, had then and then paid to the said Defendants the said sum of twenty seven Dollars as a Premium for the insurance of Two thousand Dollars upon the stock of groceries mentioned in the said Instrument or policy of Insurance, and had then and there undertaken and faithfully promised the said Defendants to perform and fulfill all things in the said Policy and the conditions thereunto annexed contained on the part and behalf of the said assured to be performed and fulfilled, they the said defendants understood, and then and there faithfully promised the said plaintiffs that they the said defendants would assure the said plaintiffs against loss or damage by fire to the amount of two thousand dollars upon the said stock of groceries, and would perform and fulfill all things in the said Instrument or Policy of Insurance contained on their part and behalf to be performed and fulfilled, and the said plaintiffs in fact further say that they the said Plaintiffs, at the time of making the said Policy of Insurance, and from thence until the twelfth day of February A D 1857

were interested jointly as lessees in the said insured stock of Groceries to the amount or value of all the monies by them ever insured or caused to be insured thereon, that on the said last mentioned day the interest of the said Sinclair therein was sold and transferred to said Dix and Harris, and that from the said last mentioned day, until the loss and damage herein after mentioned the said Plaintiffs Dix and Harris were jointly interested therein to the amount or value aforesaid to wit, at the County aforesaid, And that the said stock of Groceries in the said Policy mentioned afterwards to wit on the second day of March A.D. 1857 to wit at the County aforesaid was burnt consumed and destroyed by fire, and that no part thereof was lost by theft, and the said fire did not happen or take place by means of lightning or of any invasion insurrection riot or civil commotion or of any Military or usurped power, or by the explosion of a Steam boiler, or by camphene or by the explosion of Gunpowder, whereby the said Plaintiffs then and there sustained damage and loss according to the true and actual cash value of the property at the time the said fire happened to a large amount to wit to the amount of the said sum of two thousand dollars or assumed on the said stock of Groceries so burnt and consumed over and above and beyond all other Insurance on the said stock - And the said Plaintiffs further say that the said defendant did not

15 at any time after the making of the said policy and before the loss or damage hereinbefore mentioned require that notice of any other Insurance on the said Stock of Groceries should be given to the said Defendant and that the premises mentioned in the said policy were not at any time after the making and during the continuing of the said Insurance appropriated applied or used to or for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra hazardous, or specified in the memorandum of special rates in the conditions annexed to the said Policy, or for the purpose of storing using or vending therein any of the articles goods or merchandise in the condition aforesaid denominated hazardous or extra hazardous, or included in the memorandum of special rates

And the said plaintiffs in fact further say that the said Stock of Groceries in the said Policy mentioned, and the building containing the same, were duly described and not otherwise than they really were or so as to cause the said Insurance to be effected upon a lower Premium than it ought to have been, and that during the continuance of the said Insurance the risk was not at any time increased by any means within the control of the said Plaintiff nor was the said Building occupied in any way so as to render the risk more hazardous than at the time



of insuring, And that the said Plaintiffs did forthwith after the said loss or damage to wit on the 7<sup>th</sup> day of March A.D. 1857 at the County aforesaid give notice thereof to the said Defendants, and did also as soon after as possible to wit on the 7<sup>th</sup> day of March aforesaid at the County aforesaid deliver in a particular account of such loss or damage signed and verified as required by the said conditions, and did also declare on oath what other Insurance had been made on the said property what was the whole value of the subject insured what was the interest of the plaintiffs therein in what general manner the building containing the subject insured and the several parts thereof were occupied at the time of the loss, and who were the occupants of said Building, and when and how the fire originated as far as they knew or believed, and did produce and deliver to the said Defendants such certificate under the hand of a Notary public as is required by the said conditions, and were ready and willing to produce their books of account and all proper vouchers and to submit to an Examination under an oath and to answer all questions touching their knowledge of any thing relating to such loss or damage or to their claim thereupon and subscribe such Examination, the same being reduced into writing, And the said Plaintiffs further say that altho' they the said Plaintiffs have in all things

conformed themselves to and observed all and singular the said Articles and Stipulations conditions matters and things which on their part were to be observed and performed, according to the form and effect of the said Policy and of the said conditions thereunto annexed and altho the stocks and fund of the said Company always from the time of the making of the said policy hitherto have been and yet are sufficient to pay to the said plaintiffs the said damage and loss sustained by the said fire, and altho six ty days after notice and proof thereof made by the said Plaintiffs and received by the said Defendants at their office in conformity to the conditions annexed to the said policy had long elapsed before the commencement of this suit, of all of which said several premises the said defendants afterwards to wit, on the day and year last aforesaid at the County aforesaid had notice and were then and there requested by the said Plaintiffs to pay them the said sum of Two thousand dollars or by them insured as aforesaid yet the said defendants not regarding their said promise and undertaking so by them made as aforesaid did not nor would when they were so requested as aforesaid or at any time before or since pay the said sum of Two thousand dollars or any part thereof but have hitherto wholly <sup>neglected</sup> ~~neglected~~ and refused

sets to do and still neglect and refuse sets to do to wit  
at the County aforesaid

And also for that whereas heretofore to wit  
on the 8<sup>th</sup> day of December A D 1856 at Chicago to wit  
at the County of Cook aforesaid by a certain other  
Instrument or policy of assurance then and  
there made under the hands of Cyrenius Bess  
the President and Thomas Richmond the Secretary  
of the said Corporation, and countersigned by  
Justin Parsons the agent of the said Company  
at Chicago aforesaid, the said Cyrenius  
Bess, Thomas Richmond and Justin Parsons  
acting and being duly authorized for and  
on the behalf of the said Corporation the said  
Mercantile Insurance Company in consideration  
of sixteen Dollars and twenty cents to them paid  
the receipt whereof was thereby acknowledged did  
thereby agree to insure the said Plaintiffs  
by their then name or style of Dr. Sinclair  
and Harris against loss or damage by fire  
to the amount of the further sum of three  
thousand Dollars on their Stock of Wholesale  
Groceries, Wines and Liquors contained in the  
Brick Building known as No 43 South Water Street  
Chicago Ill and reference was thereby made for  
further particulars to the application No 830  
on file in the Office of the said Company  
and which application is therein said to form  
a part of the said policy. And the said Corporation

thereby promised and agreed to make good unto the said assured, their Executors administrators and assigns all such immediate loss or damage not exceeding in amount the sum insured as should happen by fire to the property as above specified from the 8<sup>th</sup> day of December one thousand eight hundred and fifty six (at noon) unto the 8<sup>th</sup> day of March one thousand eight hundred and fifty seven (at noon) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same should happen and to be paid within sixty days after notice and proof thereof made by the assured and received at their office in conformity to the conditions annexed to the said policy, Provided always and it was thereby declared that the said Corporation should not be liable to make good any loss by theft or any loss or damage by fire which might happen or take place by means of any invasion insurrection riot or civil commotion or of any military or usurped power, and further that in case the assured should have already any other assurance against loss by fire on the property thereby assured and not notified to the said Company and mentioned in or endorsed upon the said Policy then the said Insurance should be void and of no effect.

but the said Company thereby admitted notice of other Insurances to the amount of Twelve thousand dollars - And if the said assured or their assigns should thereafter make any other insurance on the same property and should not with all reasonable diligence give notice thereof to the said Company and have the same endorsed on the said Policy or otherwise acknowledged by them in writing the said policy should cease and be of no further effect And in case of any other insurance upon the property thereby insured whether prior or subsequent to the date of the said Policy the assured should not in case of loss or damage be entitled to demand or recover of the said Company any greater portion of the loss or damage sustained than the amount thereby insured should bear to the whole amount insured on the said property, and it was by the said policy agreed agreed and declared to be the true intent and meaning of the parties thereto, that in case the above mentioned premises should at any time after the making, and during the continuance of the said Insurance be appropriated applied or used to or for the purpose of carrying on or exercising therein any trade business or vocation enumerated hazardous or Extra Hazardous, or specified in the memorandum of special rates, in the conditions annexed to

the said policy, or for the purpose of storing, using or  
vending therein any of the articles, goods or merchan-  
dise in the conditions aforesaid denominated  
hazardous or extra hazardous, or included in  
the memorandum of special rates, unless otherwise  
specially provided for or thereafter agreed by the  
said Company in writing, and added to or  
endorsed upon the said Policy, then and from  
thenceforth so long as the same should be so  
appropriated, applied, used or occupied the  
said Policy should cease and be of no force  
or effect, and it was moreover declared  
that the said Policy was made and declared  
accepted in reference to the conditions thereunto  
annexed, which were to be used and resorted  
to in order to explain the rights and obligations  
of the parties thereto in all cases not therein  
otherwise specially provided for, as by the said  
Instrument or Policy of Insurance reference  
being thereunto had will more fully appear.

And the said Plaintiffs in fact say that the  
conditions annexed to the said last mention-  
ed policy are the same in every respect as those  
annexed to the policy first herein before stated  
and set forth, and contain amongst other conditions  
similar in every respect to the conditions, herein  
before set forth. And the said Plaintiffs further  
say that the said application in the said policy  
of the 8<sup>th</sup> day of December 1856 mentioned or referred

was and is a certain application as following, viz.

22 Applicants Statement, application of Dix Sinclair  
& Harris of Chicago in the County of Cook State of Ill  
to the Mercantile Insurance Company of Chicago  
Illinois for Insurance against fire in said  
Company to the amount of            Dollars for  
the term of            from the Eighth day of December  
1856 upon the following property situate in the city  
of Chicago County of Cook, State of Ill,

Words of Policy	Estimated value	Insurance value
Three thousand Dollars on their \$1/2 of wholesale Groceries Wines & Liquors contained in the Brick Building known as to 43 South Water Street Chicago Ill. 100,000.		3000

Being of the least value of each item of said <sup>movable</sup> ~~insurable~~ prop-  
erty, the cash premium paid to Justin Parsons agent  
of said Company for said Insurance amounting  
to sixteen  $\frac{20}{100}$  Dollars being  $1\frac{35}{100}$  per cent thereon  
there is no other person interested in said -  
and other Insurance in the  
Insurance Company to the amount of 12000 Dollars  
\$2000 Dix Sinclair & Harris's applicant

By Justin Parsons

Agents survey - for which the Company will be responsible

Survey of Buildings insured

See application No 728, filed in this Office

also " " 1108 " " " " Chicago

City Ins Cos Office, of which said instrument or  
Policy of Insurance, and the conditions thereto annexed

and the said application the said defendants afterwards to wit, on the day and year first in this count mentioned at the county aforesaid had notice and thereupon afterwards to wit on the day and year last aforesaid at the county aforesaid in consideration that the said plaintiffs at the special instance and request of the said Defendant, had then and there paid to the said Defendants the said sum of sixteen Dollars and twenty cents as a Premium for the Insurance of three thousand Dollars upon the Stock of Wholesale Groceries Wines and liquors mentioned in the said Instrument or policy of Insurance and had then and there undertaken and faithfully promised the said Defendants to perform & fulfil all thereof in the said policy and the conditions thereunto annexed and the said application contained on the part and behalf of the said assured to be performed and fulfilled, they the said Defendants undertook and then and there faithfully promised the said plaintiffs that they the said Defendants would assure the said plaintiffs against loss or Damage by fire to the amount of three thousand Dollars upon the said Stock of Wholesale Groceries Wines and liquors, and would perform and fulfil all things in the said Instrument or policy of assurance contained on their part and behalf to be performed and fulfilled, and the said plaintiffs in fact further say that they



the said plaintiffs at the time of making the said Policy of Insurance, and from thence until the twelfth day of February A D 1857 <sup>interested</sup> were jointly as copartners in the said insured stock of Groceries Wines and Liquors to the amount or value of all the monies by them ever insured or caused to be insured thereon that on the said last mentioned day the interest of the said Sinclair therein was sold and transferred to said Dix and Harris, and that from the said last mentioned day until the loss and damage hereinafter mentioned the said Plaintiffs Dix and Harris were jointly interested therein to the amount or value aforesaid, to wit at the County aforesaid, And that the said Stock of Wholesale Groceries Wines and Liquors in the said policy mentioned afterwards to wit on the second day of March A D 1857, to wit at the County aforesaid was burnt, consumed and destroyed by fire and that no part thereof was lost by theft, and the said fire did not happen or take place by means of lightning, or of any invasion, insurrection riot, or civil commotion, or of any military or usurped power or by the explosion of a Steam boiler, or by lamp-glass or by the explosion of gunpowder whereby the said plaintiffs then and there sustained damage and loss according to the true and actual cash value of the property, at the time the said fire happened, to a large amount, to wit, to the amount of the said sum of three thousand

Dollars so assured on the said stock of Wholesale Groceries, <sup>Wines</sup> & liquors so burnt and consumed over and beyond all other insurance thereon and the said Plaintiffs further say that at the time of the making of the said policy they the said plaintiffs had not any other insurance against loss by fire on the property thereby insured except as hereinbefore mentioned, and that after the making of the said policy they did not make or effect any other insurance on the same property not notified to the said Defendants, and that the premises mentioned in the said policy were not at any <sup>time</sup> after the making and during the continuance of the said insurance appropriated applied or used to or for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra hazardous, or specified in the memorandum of special rates in the conditions annexed to the said Policy, or for the purpose of storing using or vending therein any of the articles goods or merchandise in the conditions aforesaid denominated hazardous or extra hazardous or included in the memorandum of special rates. And the said Plaintiffs further say that the the said Stock of Wholesale Groceries Wines and liquors in the said policy mentioned and the building containing the same were duly described and

not otherwise than they really were, or so as to  
 cause the said Insurance to be effected  
 upon a lower Premium than it ought to  
 have been, and that during the continuance  
 of the said Insurance the risk was not at  
 any time increased by any means within the control  
 of the said Plaintiffs, nor was the said Building  
 occupied in any way so as to make the risk  
 more hazardous than at the time of insuring,  
 and that the said Plaintiffs did forthwith  
 after the said loss or damage, to wit on the  
 seventh day of March A D 1857 at the County  
 aforesaid give notice thereof to the said  
 Defendants, and did also as soon after as  
 possible, to wit on the seventh day of March  
 aforesaid, at the County aforesaid, deliver  
 in a particular account of such loss or  
 damage signed and verified as required by the  
 said Conditions, and did also declare on  
 oath that <sup>what other</sup> the Insurance had been made on  
 the said property, what was the whole value  
 of the subject insured, what was the interest  
 of the said Plaintiffs therein, in what general  
 manner the building containing the subject  
 insured and the several parts thereof were oc-  
 cupied at the time of the loss, and who  
 were the occupants of said Building, and  
 when and how the fire originated as far  
 as they knew or believed, and did procure and

27  
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delivered to the said defendants, such certificate under the hand of a Notary public, as is required by the said conditions, and were ready and willing to procure their books of account and proper vouchers, and to submit to an examination under oath, and to answer all questions touching their knowledge of anything relating to such loss or damage or to their claim thereupon and subscribe such examination, the same being reduced into writing, And the said plaintiffs further say that altho they the said plaintiffs have in all things conformed themselves to and observed all and singular the said articles stipulations conditions matters and things which on their part were to be observed and performed according to the form and effect of the said Policy and of the said conditions thereto annexed, and of the said applications, and altho the stocks and fund of the said Company always from the time of the making of the said Policy hitherto have been and yet are sufficient to pay to the said Plaintiffs the said Damage and loss sustained by the said fire and altho sixty days after notice and proof thereof made by the said plaintiffs and received by the said defendants at their Office in conformity to the conditions annexed to the said Policy had long elapsed before the commencement of this suit of all which said several premises the said defendants afterwards to wit on the day and year

Last aforesaid, at the County aforesaid had notice & were then and there requested by the said Plaintiffs to pay them the said sum of three thousand Dollars so by them insured as aforesaid, yet the said Defendants not regarding their said promise and undertaking so by them made as aforesaid did not nor would when they were so requested as aforesaid or at any time before or since pay the said sum of three thousand Dollars or any part thereof but have hitherto wholly neglected and refused so to do and still neglect and refuse so to do to wit at the County aforesaid -

And also for that whereas the said Defendants heretofore to wit, on the 27<sup>th</sup> day of June one thousand Eight-hundred and fifty seven at the County aforesaid were indebted to the said Plaintiffs in the further sum of six thousand dollars lawful money of the United States for so much money by the said Plaintiffs before that time paid out and expended to and for the use of the said Defendants, and at their special instance and request and also in the further sum of six thousand Dollars like lawful money for other money by the said Defendants before that time had and received to and for the use of the said Plaintiffs, And also in the further sum of six thousand dollars like lawful money then and there found to be due and owing from the said Defendants

to the said Plaintiffs and in arrears and unpaid upon an account then and there stated between them, and being so indebted they the said defendants in consideration thereof afterwards to wit on the day and year last aforesaid at the County aforesaid undertook and faithfully promised the said Plaintiffs to pay them the said several sums of money in this Count mentioned when they the said Defendants should be thereunto afterwards requested,

Nevertheless the said Defendants not regarding their said several promises and undertakings have not paid the said several sums of money or any of them or any part thereof to the said Plaintiffs although after requested so to do but the said defendants have hitherto neglected and refused and still do neglect and refuse to pay the same to the said Plaintiffs to the damage of the said Plaintiffs six Thousand Dollars and therefore they bring their suit &c.

L Bentley  
Plaintiffs Attorney

(Copies of Instruments & Counts sued on -)

Copy of the Policy mentioned in the second Count of Declaration

Mercantile Insurance Company, No 830,

By this Policy of Insurance, the Mercantile

30.

Insurance Company, in consideration of fifteen <sup>20</sup>/<sub>100</sub> Dollars, to the said Corporation paid the receipt whereof is hereby acknowledged, hath agreed to insure and doth hereby agree to insure Sir Sinclair & Harris, against loss or damage by fire, to the amount of three thousand dollars on their Stk of Wholesale Groceries Wines & Liquors contained in the brick Block known as No 43 S Water St Chicago Ill.~

For further particulars see application to 830. on file in their Office which forms a part of this Policy,

Other Insurance \$12,000.

And the said Corporation, doth hereby promise and agree to make good unto the said assured their Executors, administrators and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified from the 8<sup>th</sup> day of Dec one thousand Eight hundred and fifty six (at noon) unto the 8<sup>th</sup> day of March one thousand Eight hundred and fifty seven (at noon) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen and to be paid within sixty days after notice and proof thereof made by the assured, and received at this Office, in conformity to the conditions annexed to this Policy, Provided always and it is hereby declared, That this Corporation shall not be liable

to make good any loss by theft; 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. And provided further that in case the assured shall have already any other insurance against loss by fire, on the property hereby insured, and not notified to this company and mentioned in or endorsed upon this Policy then this insurance shall be void and of no effect; And if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this Policy shall cease and be of no further effect.

And if any subsequent insurance should be made upon the property hereby insured, which, with the sum or sums already insured, should, in the opinion of the said Mercantile insurance company, amount to an over insurance, said company reserve to themselves the right of cancelling this Policy by paying to the insured, the unexpired premium pro rata. 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



herby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time after the making and during the continuance of this insurance, be appropriated, applied to or used to or for the purpose of carrying or exercising therein any trade, business or vocation, denominated hazardous or extra hazardous, or specified in the memorandum of special rates, in the conditions annexed to this policy, or for the purpose of storing or vending therein any of the articles goods or merchandize in the conditions aforesaid denominated hazardous or extra hazardous or included in the memorandum of special rates unless herein otherwise specially provided for, or hereafter agreed by this company in writing, and added to or endorsed upon this policy, or if such premises are privileged to be occupied for certain purposes denominated hazardous or extra hazardous or included in the memorandum of special rates, by this Company in writing, and they shall afterward at any time afterward and during the continuance of this insurance, be occupied for other purposes denominated hazardous or extra hazardous, or included in the memorandum of special rates, without leave for such change of occupation being first obtained from the

Company in writing and added to or endorsed upon this policy, then and from thenceforth so long as the same shall be so appropriated applied used or occupied, these presents shall cease and be of no force or effect.

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

This Policy shall not be valid until countersigned by Justin Parsons agent of the said Company at Chicago.

In witness whereof the Mercantile Insurance Company have caused these presents to be signed by their President and Secretary in the city of Chicago.

Attested

Lorenzius Beers President

Theo Richmond Secretary

Justin Parsons agent

Chicago Dec<sup>r</sup> 8, 1856

Conditions of Insurance Referred to in the body  
of the foregoing Policy -

1 Goods are denominated, not hazardous, hazardous, and ~~are~~ hazardous - Goods not hazardous are such as are usually kept in Dry Goods stores, including coffee, flour, household furniture and linen, indigo rice & spices sugars, teas and other articles not combustible; but are in all cases to be charged ten cents in addition to the rate on the building in which they are contained, except when contained in buildings of the fourth class - in such cases they are to be charged only with the rate of the building -

2 The following trades and occupations, goods wares and merchandize are denominated hazardous and are in all cases to be charged 20 cents in addition to the rate on the building containing them except where a \* is prefixed the 20 cents are to be put upon the goods alone and not on the building containing them  
Viz. Alcohol, basket sellers \* brush makers ~~makers~~ stools, cabinet furniture, \* China, earthen or glass ware, or plate glass in boxes, crates or casks, copper plate printers, cotton in bales, hat finishers, (without use of fire except for heating their irons), \* hardware and cutlery \* Jewellers stock, \* liquor in glass, unpacked, \* looking glasses in boxes, Manila grass in bales, \* paints ground in oil, \* paper hangings, porter houses, \* potash \* pocket book makers stock, printers of news papers, rags in packages, sail makers ship chandlers, # glass in packages, \* window or plate glass in packages. -

\* Cigar makers, # Stationers stock, smuff  
# Spirituous liquors  
\* makers \* Crushed grain, tin or sheet iron works, victualling house, \* Watch makers, stools & stools, # wine m.

35 3. The following trades and occupations, goods, wares, and merchandise are denominated extra hazardous and are in all cases to be charged 40 cents in addition to the rate on the building in which they are contained except where a \* is prefixed, the 40 cents are to be put on the goods alone and not on the building containing them viz; basket makers and straw bleachers, \* booksellers stock, blacksmiths boat builders, brass founders, \* china, earthen or glass ware, or looking glasses unpacked, cotton unpacked, Coopers copper smiths, druggists, and apothecaries, fur dressers glass in bales, Fringe makers, gun makers or smiths, grate makers, hay pressed in <sup>bundles</sup> builders, hemp in bales, ink makers, lamp manufactures, \* lamp sellers stock lithographers \* milliners stock, Morocco Manufactures optical and mathematical instrument makers, painters stock \* perfumers stock, phosphorus, \* pictures and prints, printers of books and jobbing plates or plated ware manufactories pocket book makers, plumbers and pewterers, saltpetre silver smiths, stables (private) spirits of turpentine, Stone <sup>tobacco</sup> Manufactories, \* Toy keepers stock, type or stereotype manufacturers, varnish, \* window and plate glass unpacked.

Alcove Bakers, bark mills, blind makers, breweries, brimstone works, book binders, blacksmiths, boat builders, cabinet makers, carpenters, joiners coopers chain and coach-makers workshops, chemists, cotton mills, distilleries, dyers, forges fences, flat mills, framemakers furriers, fulling mills, gun powder, grist mills, hat manufactures, house building or repairing, ink or ivory black,

36 or lamp black manufactories, livery stables, lumber or ma-  
logany <sup>yards</sup> ~~houses~~, malt houses, metal and other mills  
of all kinds, musical instrument makers, oil makers, oil  
boiling houses, oakum factories, pump and block makers  
shops, paper mills, piazzas and privies of wood, printers  
of books and jobbing, rope makers, sack makers, saw or  
sneff mills, ship builders stocks in the yards, ships or  
other vessels in port, or their cargoes, or when build-  
ing or repairing steam engines or boats, sugar re-  
finers, tallow melters, or chandlers, tar boiling  
houses, theatres or other places of public exhibition, tim-  
ber yards, turpentine manufactories, varnish makers  
woolen mills, and generally all manufacturing  
establishments, and all trades requiring the use of fire  
heat or steam power, not before enumerated, will be insured  
at special rates of premium.

4. Applications for insurance must specify the  
construction and material of the buildings to be  
insured, or containing the property to be insured;  
by whom occupied, whether as a private dwelling  
or how otherwise, its situation with respect to contig-  
uous buildings, and their construction and materials;  
whether any manufactory is carried on within or about  
it, and in case of goods or merchandise, whether  
or not they are of the description denominated haz-  
ardous or  $\frac{3}{4}$  true hazardous, or included in the mem-  
orandum of special rates. And a false description  
by the insured, or of a building, or of its contents or

37 omitting to make known any fact or feature in the risk, which increases the hazard of the same; or in a valued policy, and so or valuation shall render absolutely void a policy issuing upon such description or valuation. And if any survey plan or description of the property herein insured is referred to in this policy, such survey, plan, or description shall be deemed and taken to be a warranty on the part of the assured. If after insurance is effected upon any building or goods in this office, either by the original <sup>Policy</sup> or by the renewal thereof, the risk shall be increased by any means whatsoever within the control of the assured, or if such building or premises shall with the assent of the assured, be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void and of no effect. If during the insurance the risk be increased by the erection of buildings or by the use or occupation of neighboring premises or otherwise, or if for any other cause the company shall so elect, it shall be optional with the company to terminate the insurance, after notice given to the assured, or his representative of their intention to do so; In which case the company will refund a ratable portion of the premium.

5. An insurance whether original or continued shall be considered as binding until the actual payment of the premium

6. Goods held in trust, or in or on commission are to be insured as such, otherwise the policy will not cover such property, and in case of loss, the names of the respective owners shall be set forth in the preliminary proof of such loss, together with their respective interests therein, certified by them. Goods on storage must be separately and specifically insured.

7. Policies of insurance subscribed by this company shall not be assignable, without the consent of the company expressed by endorsement made thereon, in case of assignment without such consent, whether of the whole policy, or of any interest in it, the liability of the company, in virtue of such policy shall thenceforth cease. And in case of any sale, transfer or change of title in property insured by this company, or of any undivided interest therein, such insurance shall be void and cease.

8. This Company will not be liable for loss or damage caused by lightning except that which results from fire that may ensue therefrom nor for any loss either by fire or otherwise occasioned by the explosion of a steam boiler or occasioned by camphene, or by the explosion of gunpowder.

9. Jewels, watches, plates, medals, musical instru.

ments, paintings, Statuary, sculptures, and curio-  
 are not deemed to be included, in any insurance  
 unless an inventory thereof, accompanying the  
 application, or is inserted in the policy -

10. 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 all possible diligence in saving and  
 preserving the property. And if they shall fail so to do  
 this Company shall not be held answerable to  
 make good the loss and damage sustained in  
 consequence of such neglect. And it is mutually  
 understood that there can be no abandonment  
 to the insurer of the subject insured -

11. All persons insured by this Company, and  
 sustaining loss or damage by fire, are forthwith  
 to give notice thereof to the Company; and as  
 soon after as possible to deliver in a particular  
 account of such loss or damage, signed with  
 their own hands, and verified by their oath or  
 affirmation. They shall also declare on oath  
 whether any and what other insurance has been  
 made on the same property; what was the whole  
 value of the subject insured; what was their  
 interest therein, in what general manner  
 (as to trade, manufactory, merchandise, or otherwise)  
 the building insured or containing the subject insured,  
 and the several parts thereof, were occupied at



40 the time of the loss, and who were the occupants of  
such building; and when and how the fire originated  
so far as they know or believe; and procure a certifi-  
cate under the hand of a Magistrate or notary public  
(most contiguous to the place of the fire and <sup>not</sup> concerned  
in the loss, as a creditor or otherwise) or Related to  
the insured or sufferers, that he is acquainted with  
the character and the circumstances of the person or  
persons insured, and has made diligent inquiry in  
to the facts set forth in their statement, and  
knows or verily believes that he or they, really  
and by misfortune, and without <sup>fraud</sup> or evil practice  
hath or have sustained (by such fire) loss and damage  
to the amount therein mentioned; and also if re-  
quired, shall produce their books of account and  
other proper vouchers, and shall also if required sub-  
mit to an examination under oath, by the agent  
or attorney of the company, and answer all questions  
touching his, her or their knowledge of anything  
relating to such loss or damage by fire, or to  
their claim thereupon, and subscribe such ex-  
amination, the same being reduced to writing;  
and until such proofs, declarations and certificates  
are produced, and examination if required the loss  
shall not be deemed payable; Also if there appear  
any fraud or false swearing the insured shall forfeit  
all claim under this Policy, Damage to buildings  
not totally destroyed, shall be appraised by  
disinterested men, mutually agreed upon by the

41

insured, and the Office or its agents; And where merchandise or other personal property, is partially damaged, the insured shall forthwith cause to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article by disinterested appraisers mutually agreed upon whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant, one half of the appraisers fees to be paid by the insured. The expense of ascertaining, and proving any loss which may occur, and also forwarding such proofs to the Office of the Company, shall be paid by the party insured.

A copy of the written portion of the policy to be given in the affidavit of the claimant in all cases.

12 Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved, and the proof received at the Office, and in case differences shall arise touching any loss or damage after proof thereof has been received in due form, it may be submitted to the judgment of arbitrators, indifferently chosen whose award in

42 writing shall be binding on the parties, 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 to repair the building or buildings within a reasonable time: giving notice of their intention so to do within thirty days after having received the proof of loss required by the eleventh article of these conditions.

13. Insurance once made may be continued for such further term as may be agreed on the premium therefor being paid, and a renewal receipt being given for the same; and it shall be considered as continued under the original representations, in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself or by the surrounding or adjacent buildings.

14. Where property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers pro rata, in the proportion that the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant.

43

15. It is further more ~~he~~ expressly provided, that no suit or action of any kind against said company for the recovery of any claim upon under or by virtue of this Policy shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within the term of twelve months next after the loss or the damage shall occur: And in case any suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

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

Copy of Policy mentioned in 1<sup>st</sup> Account of Declaration

44

Mercantile Insurance Company No 728.

By this Policy of Insurance the Mercantile Insurance Company, in consideration of Twenty seven Dollars to the said Corporation paid, the receipt whereof is hereby acknowledged, hath agreed to insure, and doth hereby agree to insure, Dix Sinclair & Harris,

Against loss or Damage by fire to the amount of Two thousand Dollars on their Goods contained in the Brick Building situated and known as to 43 South Water St City of Chicago Ills.

\$2000, at 1 <sup>35</sup>/<sub>100</sub> % is \$27 -

Other Insurance permitted without notice to this Company until required.

And the said Corporation doth hereby promise and agree to make good unto the said assured their Executors administrators and assigns all such immediate loss or damage not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, from the 27<sup>th</sup> day of September one thousand Eight Hundred and fifty six (at noon) unto the 27<sup>th</sup> day of September one thousand Eight hundred and fifty seven (at noon) the said loss or damage to be estimated according to the true and actual cash value of the property at the time the same shall happen: and to be paid within sixty days after notice and proof thereof made by the

assured and received at this <sup>Office</sup> in conformity to the conditions annexed to this Policy, Provided always and it is hereby declared, that this Corporation shall not be liable to make good any loss by theft 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. And provided further, that in case the assured shall have already any other insurance against loss by fire, on the property hereby insured, and not notified to this Company, and mentioned in or endorsed upon this Policy, then this assurance shall be void and of no effect. And, if the said assured or their assigns shall hereafter make any other insurance on the same property and shall not with all reasonable diligence give notice thereof to this Company, and have the same endorsed on this instrument or otherwise acknowledged by them in writing this Policy shall cease and be of no further effect. And if any subsequent insurance should be made upon the property hereby insured which with the sum or sums already insured should in the opinion of the said Mercantile Insurance Company, amount to an over insurance, said Company reserve to themselves the right of cancelling this Policy, by paying to the insured the unexpired premium pro rata

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 -

And it is agreed and declared to be the true intent and meaning of the parties hereto, that in case the above mentioned premises shall at any time after the making, 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, denominated hazardous or extra hazardous, or specified in the memorandum of special rates, in the conditions annexed to this policy, or for the purpose of storing using or vending therein any of the articles, goods or merchandise in the conditions aforesaid denominated hazardous or extra hazardous or included in the memorandum of special rates unless herein otherwise specially provided for, or hereafter agreed by this Company in writing and added to or endorsed upon this Policy, or if such premises are privileged to be occupied for certain purposes denominated hazardous extra hazardous or included in the memorandum of special rates by this Company in writing, and

47

they shall at any time afterward and during the continuance of this insurance, be occupied for other purposes, denominated hazardous or extra hazardous, or included in the Memorandum of special rates, without leave for such change of occupation being first obtained from this Company in writing and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied used or occupied, these presents shall cease and be of no force or effect.

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

This Policy shall not be valid until countersigned by J. Parsons, agent of the said Company at Chicago. In Witness whereof the Mercantile Insurance Company have caused these presents to be signed by their President and Secretary, in the city of Chicago.

Attested  
The Richmond Secretary -  
Cyprien's Beer President

Chicago Sept 27 1856

Justin Parsons agent  
56 St Lake St



Conditions of insurance Referred to in the  
Body of the foregoing Policy -

- 1 Goods are denominated ~~not~~ hazardous, hazardous and  
extra hazardous. - Goods not hazardous are such as are  
usually kept in dry goods stores, including coffee, flour  
household furniture and linen, indigo, rice, spices, sugars,  
teas, and other articles not combustible; but are in all  
cases to be charged ten cents in addition to the rate  
on the buildings in which they are contained except  
when contained in buildings of the fourth class - in  
such cases they are to be charged only with the rate of the  
building.
- 2 The following trades and occupations, goods, wares, and  
merchandise, are denominated hazardous, and are in  
all cases to be charged 20 cents in addition to the rate  
on the building containing them, except where \* is pre-  
fixed, the 20 cents are to be put upon the goods alone  
and not on the building containing them, viz: Alcohol.  
basket sellers. \* brush makers stock, cabinet furniture \* china  
earthen or glass ware, or plate glass in boxes, crates  
or casks, copper plate printers, cotton in bales  
but finishers, (without use of fire except for heating  
their irons) \* hardware and cutlery. \* jewellers stock, \* liquor  
in glass, unpacked, \* looking glasses in boxes, Manilla  
grass in bales, \* paints ground in oil \* paper hangings  
porter houses, \* potash, \* pocket book makers stock, printers  
of newspapers, rags in packages, sail makers, ship

49 chandlers, spirituous liquors, \*cigar makers, \*stationers  
stock, snuff makers, \*threshed grain, tin or sheet iron  
workers, victualing houses, \*watch makers stock  
and tools, \*wine in glass, in packages \*window or plate  
glass in packages

3, The following trades and occupations, goods  
wares, and merchandises, are denominated, & to be bag-  
ardous, and are in all cases to be charged 40  
cents in addition to the rate on the building, in which  
they are contained, except where a \* is prefixed the  
40 cents are to be put on the goods alone, and not  
on the building containing them, viz. basket ma-  
kers and straw bleachers, \*booksellers' stock, black-  
smiths, boat builders, brass founders, \*china earthen  
or glass ware, or looking glasses unpacked  
cotton unpacked, coopers, copper smiths, druggists  
and apothecaries, fur dressers, flax in bales, fringe  
makers, gun makers or smiths, grate makers, hay  
pressed in bundles, hemp in bales, ink makers,  
lamp manufacturers, \*lamp sellers' stock, lithographers  
\*milliners' stock, Morocco manufactures optical  
and mathematical instrument makers, painters'  
stock, \*perfumers' stock, phosphorus, \*pictures and  
prints, printers of Books and jobbing, plates or  
plated ware, manufactories, pocket book makers  
plumbers and pewterers, saltpetre, silver smiths  
stables (private), spirits of turpentine, stone manufactories  
tobacco manufacturers, \*toy keepers' stock, type or

stereotype manufacturers, varnish\* window and plate glass unpacked.

Moem, - Baker, back mills, blind makers, breweries, burn stone works, book binders, blacksmiths, boat builders, cabinet makers, carpenters, joiners, coopers, chair or coach makers, workshops, chemists, cotton mills, distilleries, dyers, forges, fences, flax mills, frame makers, furriers, fulling mills, gun powder, grist mills, hat manufacturers, house building or repairing, inks or ivory black or lamp black, manufactories, livery stables, lumber or mahogany yards, malt houses, metals and other mills of all kinds, musical instrument makers, oil makers, oil boiling houses, oakum factories, pump and block makers, shops, paper mills, piazzas and fountains of wood, printers of books and jobbing, rope makers, sack makers, saw or mill mills, ship builders' stocks in the yard, ships or other vessels in port, or their cargoes, or when building or repairing, steam engines or boats, sugar refineries, tallow melters, or chandlers, tar boiling houses, theatres, or other places of public exhibition, timber yards, turpentine manufactories, varnish makers, woollen mills, and generally all manufacturing establishments, and all trades requiring the use of fire, heat or steam power not before enumerated, will be insured at special rates of premiums.

4. Applications for insurance must specify the construction and material of the buildings to be insured or containing the property to be insured; by whom occupied; whether as a private dwelling or how otherwise; its situation with respect to contiguous buildings and their construction and materials; whether any manufactory is carried on within or about it, and in case of goods or merchandise whether or not they are of the description denominated hazardous or extra hazardous, or included in the memorandum of special rates. And a false description by the insured, or of a building, or of its contents, or omitting to make known any fact or feature, in the risk, which increases the hazard of the same; or in a valued policy, an over valuation, shall render absolutely void a policy issuing upon such description or valuation. - And if any survey, plan or description of the property herein insured, is referred to in this policy such survey, plan or description shall be deemed and taken to be a warranty on the part of the assured. If after insurance is effected upon any building or goods in this office either by the original policy or <sup>by</sup> the renewal thereof the risk shall be increased by any means whatsoever, within the control of the assured or if such building or premises shall, with the assent of the assured, be occupied in any way so as to render the risk more hazardous.

52. than at the time of insuring, such insurance shall be void and of no effect. If during the insurance the risks be increased by the erection of buildings, or by the use or occupation of neighboring premises, or otherwise, or if for any other cause the company shall so elect, it shall be optional with the company to terminate the insurance, after notice given to the assured, or his representative, of their intention to do so; in which case the company will refund a ratable portion of the premium.

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

6. Goods held in trust, or on commission, are to be insured as such; otherwise the policy will not cover such property; and in case of loss, the names of the respective owners shall be set forth in the preliminary proof of such loss, together with <sup>their</sup> respective interests therein certified by them. Goods on storage must be separately and specifically insured.

7. Policies of insurance, subscribed by this company shall not be assignable without the consent of the company, expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy, or of any interest in it the liability of the company in virtue of such,

53 policy shall thereforth cease - And in case of any sale, transfer or change of title in property insured by this Company, or of any undivided interest therein, such insurance shall be void and cease,

8. This Company will not be liable for loss or damage caused by lightning, except that which results from fire that may ensue therefrom; nor for any loss either by fire or otherwise, occasioned by the explosion of a Steam boiler; or occasioned by camphene, or by the explosion of gunpowder.

9. Jewels, Watches, plate, medals, musical instruments, paintings, statuary, sculptures, and curiosities, are not deemed to be included in any insurance, unless an inventory thereof accompanying the application for insurance, or is inserted in the Policy.

10. 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 all possible diligence in saving and preserving the property. And if they shall fail so to do, this Company shall not be held answerable to make good the loss and damage sustained in consequence of such neglect. And it is mutually understood that there can be no abandonment to the insurance of the subject insured.

11. All persons insured by this company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the company: and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands and verified by their oath or affirmation; they shall also declare on oath whether any and what other insurance has been made on the same property; what was the whole value of the subject insured; what was their interest therein; in what general manner (as to trade, manufactory, merchandize or otherwise) the building insured or containing the subject insured and the several parts thereof, were occupied at the time of the loss; and who were the occupants of such building; and when and how the fire originated; so far as they know or believe; and procure a certificate under the hand of a magistrate or notary public (most contiguous to the place of the fire and not concerned in the loss, as a creditor or otherwise, or related to the insurer or sufferers) that he is acquainted with the character and the circumstances of the person and or persons insured, and has made diligent inquiry into the facts set forth in their statement and know or verily believes that he or she or they really and by misfortune, and without fraud or evil practice, hath or have sustained by such fire loss and damage to the amount therein mentioned; and also if required, shall produce their books of account, and other proper vouchers, and

55 shall also if required, submit to an examination under oath, by the agent or attorney of the company, and answer all questions touching his her or their knowledge of anything relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and until such proofs, declarations and certificates are produced, and examination if required, the loss shall <sup>not</sup> be deemed payable.

Also if there appear any fraud or false swearing the insured shall forfeit all claims under this policy. Damage to buildings not totally destroyed, shall be appraised by disinterested men, mutually agreed upon by the insured and the office or its agents; and where merchandise or other personal property, is partially damaged the insured shall forthwith cause to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds; and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind.

The damage shall then be ascertained by the examination and appraisal of said damage on each article by disinterested appraisers mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the complainant one half of the appraisers fees to be paid by the insurer.

The expense of ascertaining and proving any loss which may occur, and also forwarding such proofs to the Office of the Company shall be paid by the party insured.



A copy of the written portion of the policy to be given in the affidavit of the claimant in all cases -

12. Payment of ~~the~~ losses shall be made in sixty days after the loss shall have been ascertained and proved and the proof received at the Office, and in case differences shall arise touching any loss or damage, after proof thereof has been received in due form, it may be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing shall be binding on the parties. 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 to repair the building or buildings within a reasonable time giving notice of their intention so to do, within thirty days after having received the proofs of loss required by the eleventh article of these conditions

13. Insurance once made may be continued for such further term as may be agreed on, the premium therefor being paid, and a renewal receipt being given for the same, and it shall be considered as continued under the original representation in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself or by the surrounding or adjacent buildings

57

14. Where property insured by this company is damaged by removal from a building in which it is exposed to loss by fire, said damage shall be borne by the insured and the insurers pro rata, in proportion that the whole sum insured bears to the whole value of the property insured, of which proof in due form shall be made by the claimant,

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

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

## Copy of Common Counts,

Mercantile Insurance Company

To Dix Sinclair & Harris who sue  
for Southworth Stauson & Co

To Money paid laid out & expended	\$ 6000.
" Money had and received	\$ 6000.
" Money due on account stated	\$ 6000.

And afterwards to wit at the October term of said Court to wit on the 13<sup>th</sup> day of October A D 1857. the following proceedings among others were had and entered of Record in said Court to wit,

Joel H Dix, Horatio G Sinclair	} Asst.
George Harris use of James E Southworth, Albert Stauson	
— Southworth and Henry Farrington Jr	
up The Mercantile Insurance Co	

Ordered the rule to plead be extended in the above causes ten days.

And afterwards to wit at the October term of said Court, to wit on the 22<sup>nd</sup> day of October A D 1857 the following proceedings among others were had and

entered of record in said court to wit,

59

Joel Hollis, Horatio G. Sinclair and George J. Harris for use of James E. Southworth, Albert Clauson Talorus Southworth & Harvey Harrington jr	} Asst
vs The Mercantile Insurance Company	

Ordered that the rule to plead in this case be further extended ten days.

And afterwards to wit on the day & year last aforesaid to wit, October 22, A.D. 1857. The Mercantile Insurance Company by Shumway, Hunt & Towne their attorneys filed in the office of the clerk of said court their certain affidavit of merits, which is in the words & figures following to wit,

The Mercantile Insurance Company	} In the Circuit Court of Cook County
vs Joel Hollis, Horatio G. Sinclair, George J. Harris who sue for the use of James E. Southworth, Albert Clauson Talorus Southworth & Harvey Harrington jr	

State of Illinois }  
Cook County } ss.

Thomas Richmond being duly sworn says that he is the Secretary of the

60

defendants in the above entitled suit, that he has stated the said case to counsel and is informed by counsel and verily believes that the said defendants have a good and sufficient defence to the same upon the merits

Subscribed & sworn to this }  
21<sup>st</sup> day of October 1857 }  
before me

The Richmond

Wm L Church cl<sup>k</sup>

And afterwards to wit, on the 29<sup>th</sup> day of October A.D. 1857, the said Defendants by their attys aforesaid filed in the Office of the clerk of said court their certain Plea & Demurrer which is in the words and figures following to wit,

The State of Illinois }  
Cook County ss }

Cook County Circuit Court

The Mercantile Insurance Co }  
als }

Lacl H Dix et al }

And now comes the defendants, and defends the wrong & injury when it, & say that the plaintiff ought not to have and maintain their said action by any thing in said first count of said Declaration Contained, because they say that the said

61

first Count of said declaration, and the several matters and things therein contained in manner & form as pleaded, are entirely insufficient for the plaintiff to have & maintain their said action, and this they are ready to verify wherefore they pray judgment &c.

And the defendants for special cause of Demurrer, assign the following

I That it appears by said Count that at the time of the fire the plaintiffs did not own the goods covered by said Policy

II That during the continuance of said Policy, and before the fire said plaintiff Sinclair in violation of the said Policy, and without the written consent of said Defendants sold his interest in the goods insured to the said Joel Hobbs and said George J. Harris, and that the same was so owned at the time of the fire

III That said Count of said Declaration is otherwise insufficient uncertain and informal &c.

By Shumway Waite & Towne  
Defendants Attys

And now comes the defendants and defends the wrong & injury when &c. and say that the said plaintiffs ought not to have & maintain their said action by anything in said second Count contained because they say that said Count &

the several matters & things therein contained in manner & form as pleaded are insufficient in law for the plaintiffs to maintain their said action, and this they are ready to verify wherefore they pray Judgment &c.

And for cause of Demurrer the defendants assign the following.

¶ That it appears by said Count that at the time of the fire the plaintiffs did not own the goods covered by said Policy

¶ That during the continuance of said Policy and before the fire said plaintiff Sinclair in violation of said Policy and without the consent in writing of the defendants sold his interest in the goods insured to said Joel H Dix and George J Harris, and that the same was so owned at the time of the fire

¶ That said second Count of said Declaration is otherwise insufficient uncertain & informal &c.

By Shumway, Waite & Towne  
Defendants attys

And as to the third Count of said Declaration now comes the defendants and defends the wrong & injury when &c & say they did not assume or promise in manner & form as in said declaration mentioned

and of this they put themselves upon the country

vs

By Shumway Marten & Jones  
Defendants Attys

And afterwards to wit, at the November  
Term of said Court of the year A D 1857, to wit  
on the 2<sup>d</sup> day of January A D 1858, the following  
proceedings among others were had and entered  
of Record in said Court to wit,

Joel W Dix, Horatio G Sinclair &  
George J Harris vs of James  
E Southworth, Albert Stinson  
Valorus Southworth and Harvey Farrington Jr  
vs  
The Mercantile Insurance Company } Set

This day comes  
the said parties by their attorneys, and by their  
agreement made here in open Court, the demurrer  
of the said Defendant to the said plaintiffs  
Declaration, is hereby submitted to Court  
and the Court not being well advised in the  
premises takes the same under advisement

And afterwards to wit at the January Special  
Term of said Court to wit on the 28<sup>th</sup> day of January  
A D 1858 the following proceedings among  
others were had and entered of Record in



said Court to wit. -

64

Joel H Dix, Horatio G Sinclair  
George G Harris use of James E  
Southworth, Albert Lawson  
Talora Southworth and  
Harvey Farrington junior

Asst.

vs  
The Mercantile Insurance Company

This day come, the said Plaintiffs and with-  
draw their Common Counts herein. And the  
Court having heard Counsel on the Demurrer  
of said Defendant to said Plaintiffs declaration  
and being well advised in the premises sustains  
said Demurrer.

Therefore it is considered that said Defen-  
dant do have and recover of said Plaintiffs  
its costs and Charges by it in this behalf  
expended and have Execution therefor

10 2  
12 4  
15 1  
15 5  
16 00  
[11908-25]

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



I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the papers & proceedings in a certain cause latity pending in said Court on the Common Law side thereof, wherein Joel A. Dix & others for the use of James E. Southworth & others were plaintiffs and The Merchants Insuranc Company was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this twelfth day of November A. D. 1858

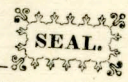
Dec 16<sup>th</sup>

*W. L. Church*  
Clerk.

are and of right ought to be given to all his official acts as such, in all Courts of Record, and elsewhere; and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal, at my chambers in Chicago, this twelfth day of November A. D. 1858

*George Manierre*  
Sole presiding Judge of  
Seventh Judicial Circuit  
Illinois.



Errors assigned by Plaintiffs

- 1 The Court erred in sustaining the Demurrer of the Defendants to the Plaintiffs Declaration
- 2 The Court erred in allowing the defendants judgment against the Plaintiffs for costs &c  
C. Bentley  
Suff. Atty.

John H. Drost  
vs  
vs

Mercantile Insurance Co.

And now comes the  
defendants in view and say  
that there are no issues in said  
records and proceedings as  
alleged and they pray that  
said judgment be affirmed  
with costs

Shirley W. Borne  
Atty for def vs Ins

107 - 167  
Joel H. Dix & others

or

The Mercantile Ins Co,

Transcript

Filed December 2<sup>d</sup> 1858

L. Leland  
Clerk

# In the Cook County Circuit Court.

STATE OF ILLINOIS, }  
Cook County, } ss.

JOEL H. DIX, HORATIO G. SINCLAIR, GEORGE J. HARRIS,  
To the use of  
JAMES E. SOUTHWORTH, ALBERT SLAUSON, VALORUS SOUTHWORTH  
and HARVEY FARRINGTON, JR.,  
*versus*  
THE MERCANTILE INSURANCE COMPANY.

## Abstract of the Record

OF THE ABOVE CASE.

BE IT REMEMBERED, to wit: That on the 27th day of June, A. D. 1857, there was filed in the office of the Clerk of the Circuit Court of Cook County, in the State of Illinois, a certain bond for costs, which is in the words and figures following, to wit:

[Here follows the bond for costs.]

And afterwards, to wit: on the 27th day of June, A. D. 1857, there was also filed in the office of the Clerk of the Circuit Court aforesaid a certain "*præcipe*," which is in the words and figures following, to wit:

[Here follows the "*præcipe*."]

And afterwards, to wit: on the 27th day of June, A. D. 1857, there issued out of the office of the Clerk of the Circuit Court of Cook County, in the State aforesaid, the people's certain writ, commonly called summons, which is clothed in the words and figures following, to wit:

[Here follows the summons, and return thereon.]

And afterwards, to wit: on the 2d day of October, A. D. 1857, there was filed in the office of the Clerk of the Circuit Court of Cook County, in the State aforesaid, a certain "declaration," which is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF COOK COUNTY, OF THE OCTOBER TERM, A. D. 1857.

STATE OF ILLINOIS, }  
COOK COUNTY, } ss.

Joel H. Dix, Horatio G. Sinclair and George J. Harris, plaintiffs in this suit, (who sue for the use of James E. Southworth, Albert Slauson, Valorus Southworth and Harvey Farrington, Jr., carrying on business under the name and style of Southworth, Slauson & Co.,) by Cyrus Bentley, their attorney, complain of the Mercantile Insurance Company, a corporation established and existing under the laws of the State of Illinois, defendants in this suit, who have been summoned, &c., of a plea of trespass on the case upon promises: For that whereas, heretofore, to wit: on the twenty-seventh day of September, A. D. 1856, at Chicago, to wit: at the County of Cook aforesaid by a certain instrument or policy of insurance then and there made under the hands of Cyrenius Beers, the President, and Thomas Richmond, the Secretary of the said corporation, and countersigned by Justin Parsons, the agent of the said Company, at Chicago aforesaid, the said Cyrenius Beers, Thomas Richmond and Justin Parsons, acting and being duly authorized for and on behalf of the said corporation, the said Mercantile Insurance Company, in consideration of twenty-seven dollars to them paid, the receipt whereof was thereby acknowledged, did thereby agree to insure the said plaintiffs by their then name or style of Dix, Sinclair & Harris, against loss or damage by fire to the amount of two thousand dollars, on their of groceries, (meaning their stock of groceries) contained in brick building situated in and known as No. 43 South Water street, city of Chicago, Illinois; and the said corporation thereby promised and agreed to make good unto the said assured, their executors, administrators and assigns, all such

immediate loss or damage, not exceeding in amount the sum insured, as should happen by fire to the property as above specified, from the twenty-seventh day of September, one thousand eight hundred and fifty-six, (at noon,) unto the twenty-seventh day of September, one thousand eight hundred and fifty-seven, (at noon,) the said loss and damage to be estimated according to the true and actual cash value of the property at the time the same should happen, and to be paid within sixty days after notice and proof thereof, made by the assured and received at their office, in conformity to the conditions annexed to said policy; provided always, and it was thereby declared, that the said corporation should not be liable to make good any loss by theft or any damage by fire which might happen or take place by means of invasion, &c.

[Here continues the declaration, from the 7th to the 9th page.]

And it was moreover declared, that the said policy was made and accepted in reference to the conditions thereto annexed, which were to be used and resorted to in order to explain the rights and obligations of the parties thereto in all cases not therein otherwise specially provided for, as by the said instrument or policy of insurance, reference being thereunto had, will more fully appear; and the said plaintiffs in fact say that the said conditions annexed to said policy are (amongst others) as follows, to wit:

[Here follows the declaration from the 9th page, reciting the conditions annexed to the policy, to the 10th page, to the 7th condition, which is as follows:]

7. Policies of insurance subscribed by this Company shall not be assignable without the consent of the Company, expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy or any interest in it, the liability of the Company in virtue of such policy shall thenceforth cease; and in case of any transfer or change of title in the property insured by this Company, or of any undivided interest therein, such insurance shall be void and cease.

[Here continues the recital of the conditions from the 11th page to the 12th page of the declaration.]

Of which said instrument or policy of assurance, and the conditions thereto annexed, the said defendant afterwards, to wit: on the day and year first aforesaid, at the county aforesaid, had notice.

And thereupon afterwards, to wit: on the day and year last aforesaid, at the county aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendants, had then and there paid to the said defendants the said sum of twenty-seven dollars as a premium for the insurance of two thousand dollars upon the stock of groceries mentioned in the said instrument or policy of insurance, and had then and there undertaken and faithfully promised the said defendants to perform and fulfill all things in the said policy and the conditions thereunto annexed contained, on the part and behalf of the said assured to be performed and fulfilled, they the said defendants undertook and then and there faithfully promised the said plaintiffs that they (the said defendants) would assure the said plaintiffs against loss or damage by fire to the amount of two thousand dollars upon the said stock of groceries, and would perform and fulfill all things in the said instrument or policy contained on their part and behalf to be performed and fulfilled.

And the said plaintiffs in fact further say, that they the said plaintiffs, at the time of making the said policy of insurance, and from thence until the 12th day of February, A. D. 1857, were interested jointly as copartners in the said insured stock of groceries, to the amount or value of all the moneys by them ever insured or caused to be insured thereon; that on the said last mentioned day, the interest of the said Sinclair therein was sold and transferred to the said Dix & Harris, and that from the said last mentioned day until the loss and damage hereinafter mentioned, the said plaintiffs, Dix & Harris, were jointly interested therein to the amount or value aforesaid, to wit: at the county aforesaid, and that the said stock of groceries in the said policy mentioned, afterwards, to wit: on the second day of March, A. D. 1857, to wit: at the county aforesaid, was burnt, consumed and destroyed by fire, and that no part thereof was lost by theft, &c.

[Here follows the declaration from the 14th to the 16th page of the record, averring that the plaintiffs have complied with all the conditions and performed everything on their part to be performed.]

And the said plaintiffs further say, that although they the said plaintiffs have in all things conformed themselves to and observed all and singular the said articles and stipulations, conditions, matters and things, which on their part were to be observed and performed according to the form and effect of the said policy, and of the said conditions thereunto annexed, and altho' the stock and fund of the said Company, always from the time

of making the said policy hitherto, have been and yet are sufficient to pay to the said plaintiffs the said damage and loss sustained by the said fire; and although sixty days after notice and proof thereof made by said plaintiffs and received by said defendants, at their office, in conformity to the conditions annexed to said policy, had long elapsed before the commencement of this suit, of all which said several premises the said defendants afterwards, to wit: on the day and year last aforesaid at the county aforesaid, had notice and were then and there requested by the said plaintiffs to pay them the said sum of two thousand dollars so by them insured as aforesaid; yet the said defendants, not regarding their said promises and undertakings so by them made as aforesaid, did not, nor would when they were so requested as aforesaid, or at any time before or since, pay the said sum of two thousand dollars, or any part thereof, but have hitherto wholly neglected and refused so to do and still neglect and refuse so to do, to wit: at the county aforesaid.

[Here follows the second count, which is like the first, except as to the amount of the policy, which is \$3000 instead of \$2000—this suit being brought upon two policies, one for \$2000 and one for \$3000, making total of \$5000.]

[Then follow the common counts, of which a nolle prosequi was subsequently entered.]

[Then follow copies of the policies to the 60th page.]

And afterwards, to wit: on the 29th day of October, A. D. 1857, the said defendants by their attorneys, filed in the office of the Clerk of said Court, their certain plea and demurrer, which is in the words and figures following, to wit:

COOK COUNTY CIRCUIT COURT,

STATE OF ILLINOIS, }  
Cook County, } s. s.

THE MERCANTILE INSURANCE Co., }  
Ads. }  
JOEL H. DIX et al. }

And now come the defendants and defend the wrong and injury, when, &c., and say that the plaintiffs ought not to have and maintain their said action by anything in said first count of said declaration contained, because they say that the said first count of said declaration, and the several matters and things therein contained in manner and form as pleaded, are entirely insufficient for the plaintiffs to have and maintain their said action, and this they are ready to verify; wherefore, they pray judgment, &c. And the defendants, for special cause of demurrer, assign the following:

1st. That it appears by said count, that, at the time of the fire, the plaintiffs did not own the goods covered by said policy;

2d. That during the continuance of said policy, and before the fire, the said plaintiff Sinclair, in violation of said policy and without the written consent of the said defendants, sold his interest in the goods insured to the said Joel H. Dix and said George J. Harris, and that the same was so owned at the time of the fire;

3d. That said count of said declaration is otherwise insufficient, uncertain and informal, &c.

By SHUMWAY, WAITE & TOWNE, Defendants' Attorneys.

[Here follows like demurrer to the second count of the declaration.]

[Here follows plea of general issue to common count.]

And afterwards, to wit: at the November term of said Court, of the year A. D. 1857, to wit: on the 2d day of January, A. D. 1858, the following among other proceedings was had and entered of record therein, to wit:

JOEL H. DIX, HORATIO G. SINCLAIR & GEORGE J. HARRIS, use of }  
JAMES E. SOUTHWORTH, ALBERT SLAUSON, VALORUS SOUTHWORTH & }  
HARVEY FARRINGTON, JR. }  
versus

THE MERCANTILE INSURANCE COMPANY.

This day come the said parties, by their attorneys, and by their agreement made here in open court, the demurrer of the said defendants to said plaintiffs' declaration is hereby submitted to the Court, and the Court not being well advised in the premises, takes the same under advisement.

And afterwards, to wit: at the January special term of said Court, to wit: on the 28th day of January, A. D. 1858, the following proceedings among others were had and entered of record in said Court, to wit:



JOEL H. DIX, HORATIO G. SINCLAIR & GEORGE J. HARRIS, to the use of }  
JAMES E. SOUTHWORTH, ALBERT SLAUSON, VALORUS SOUTHWORTH }  
& HARVEY FARRINGTON, JR. }  
*versus*

Assumpsit.

THE MERCANTILE INSURANCE COMPANY.

This day come the said plaintiffs and withdraw their common counts herein, and the Court having heard counsel on the demurrer of the said defendant to said plaintiffs' declaration, and being well advised in the premises, sustain said demurrer. Therefore, it is considered that said defendant do have and recover of said plaintiffs its costs and charges by it in this behalf expended, and have execution therefor.

[Here follows certificate.]

*Handwritten notes in the left margin, including names and dates.*

*Handwritten notes in the top center margin.*

*Handwritten notes in the top right margin.*

Supreme Court of Illinois  
3 Division April 1859.

Wash No. Dix et al  
vs 107-167  
The Mercantile Insurance Co.

Abstract of Record

John H. Dix, Plaintiff  
vs  
The Mercantile Insurance Company, Defendant  
Attorneys for Plaintiff: James E. Southworth  
Attorneys for Defendant: James J. Haynes

Filed April 18, 1859  
L. Leland  
Clerk

C. Bentley Report

[Here follows certificate]

# In the Cook County Circuit Court.

STATE OF ILLINOIS, }  
Cook County, } ss.

JOEL H. DIX, HORATIO G. SINCLAIR, GEORGE J. HARRIS,  
To the use of  
JAMES E. SOUTHWORTH, ALBERT SLAUSON, VALORUS SOUTHWORTH  
and HARVEY FARRINGTON, JR.,  
*versus*  
THE MERCANTILE INSURANCE COMPANY.

## Abstract of the Record

OF THE ABOVE CASE.

2 BE IT REMEMBERED, to wit: That on the 27th day of June, A. D. 1857, there was filed in the office of the Clerk of the Circuit Court of Cook County, in the State of Illinois, a certain bond for costs, which is in the words and figures following, to wit:

[Here follows the bond for costs.]

3 And afterwards, to wit: on the 27th day of June, A. D. 1857, there was also filed in the office of the Clerk of the Circuit Court aforesaid a certain "*præcipe*," which is in the words and figures following, to wit:

[Here follows the "*præcipe*."]

And afterwards, to wit: on the 27th day of June, A. D. 1857, there issued out of the office of the Clerk of the Circuit Court of Cook County, in the State aforesaid, the people's certain writ, commonly called summons, which is clothed in the words and figures following, to wit:

3 [Here follows the summons, and return thereon.]

4 And afterwards, to wit: on the 2d day of October, A. D. 1857, there was filed in the office of the Clerk of the Circuit Court of Cook County, in the State aforesaid, a certain "declaration," which is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF COOK COUNTY, OF THE OCTOBER TERM, A. D. 1857.

STATE OF ILLINOIS, }  
COOK COUNTY, } ss.

5- Joel H. Dix, Horatio G. Sinclair and George J. Harris, plaintiffs in this suit, (who sue for the use of James E. Southworth, Albert Slauson, Valorus Southworth and Harvey Farrington, Jr., carrying on business under the name and style of Southworth, Slauson & Co.,) by Cyrus Bentley, their attorney, complain of the Mercantile Insurance Company, a corporation established and existing under the laws of the State of Illinois, defendants in this suit, who have been summoned, &c., of a plea of trespass on the case upon promises: For that whereas, heretofore, to wit: on the twenty-seventh day of September, A. D. 1856, at Chicago, to wit: at the County of Cook aforesaid by a certain instrument or policy of insurance then and there made under the hands of Cyrenius Beers, the President, and Thomas Richmond, the Secretary of the said corporation, and countersigned by Justin Parsons, the agent of the said Company, at Chicago aforesaid, the said Cyrenius Beers, Thomas Richmond and Justin Parsons, acting and being duly authorized for and on behalf of the said corporation, the said Mercantile Insurance Company, in consideration of twenty-seven dollars to them paid, the receipt whereof was thereby acknowledged, did thereby agree to insure the said plaintiffs by their then name or style of Dix, Sinclair & Harris, against loss or damage by fire to the amount of two thousand dollars, on their of groceries, (meaning their stock of groceries) contained in brick building situated in and known as No. 43 South Water street, city of Chicago, Illinois; and the said corporation thereby promised and agreed to make good unto the said assured, their executors, administrators and assigns, all such

6

6 immediate loss or damage, not exceeding in amount the sum insured, as should happen by fire to the property as above specified, from the twenty-seventh day of September, one thousand eight hundred and fifty-six, (at noon,) unto the twenty-seventh day of September, one thousand eight hundred and fifty-seven, (at noon,) the said loss and damage to be estimated according to the true and actual cash value of the property at the time the same should happen, and to be paid within sixty days after notice and proof thereof, made by the assured and received at their office, in conformity to the conditions annexed to said policy; provided always, and it was thereby declared, that the said corporation should not be liable to make good any loss by theft or any damage by fire which might happen or take place by means of invasion, &c.

[Here continues the declaration, from the 7th to the 9th page.]

9 And it was moreover declared, that the said policy was made and accepted in reference to the conditions thereto annexed, which were to be used and resorted to in order to explain the rights and obligations of the parties thereto in all cases not therein otherwise specially provided for, as by the said instrument or policy of insurance, reference being thereunto had, will more fully appear; and the said plaintiffs in fact say that the said conditions annexed to said policy are (amongst others) as follows, to wit:

[Here follows the declaration from the 9th page, reciting the conditions annexed to the policy, to the 10th page, to the 7th condition, which is as follows:]

10 7. Policies of insurance subscribed by this Company shall not be assignable without the consent of the Company, expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy or any interest in it, the liability of the Company in virtue of such policy shall thenceforth cease; and in case of any transfer or change of title in the property insured by this Company, or of any undivided interest therein, such insurance shall be void and cease.

[Here continues the recital of the conditions from the 11th page to the 12th page of the declaration.]

12  
13 Of which said instrument or policy of assurance, and the conditions thereto annexed, the said defendant afterwards, to wit: on the day and year first aforesaid, at the county aforesaid, had notice.

And thereupon afterwards, to wit: on the day and year last aforesaid, at the county aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendants, had then and there paid to the said defendants the said sum of twenty-seven dollars as a premium for the insurance of two thousand dollars upon the stock of groceries mentioned in the said instrument or policy of insurance, and had then and there undertaken and faithfully promised the said defendants to perform and fulfill all things in the said policy and the conditions thereunto annexed contained, on the part and behalf of the said assured to be performed and fulfilled, they the said defendants undertook and then and there faithfully promised the said plaintiffs that they (the said defendants) would assure the said plaintiffs against loss or damage by fire to the amount of two thousand dollars upon the said stock of groceries, and would perform and fulfill all things in the said instrument or policy contained on their part and behalf to be performed and fulfilled.

14 And the said plaintiffs in fact further say, that they the said plaintiffs, at the time of making the said policy of insurance, and from thence until the 12th day of February, A. D. 1857, were interested jointly as copartners in the said insured stock of groceries, to the amount or value of all the moneys by them ever insured or caused to be insured thereon; that on the said last mentioned day, the interest of the said Sinclair therein was sold and transferred to the said Dix & Harris, and that from the said last mentioned day until the loss and damage hereinafter mentioned, the said plaintiffs, Dix & Harris, were jointly interested therein to the amount or value aforesaid, to wit: at the county aforesaid, and that the said stock of groceries in the said policy mentioned, afterwards, to wit: on the second day of March, A. D. 1857, to wit: at the county aforesaid, was burnt, consumed and destroyed by fire, and that no part thereof was lost by theft, &c.

[Here follows the declaration from the 14th to the 16th page of the record, averring that the plaintiffs have complied with all the conditions and performed everything on their part to be performed.]

16  
17 And the said plaintiffs further say, that although they the said plaintiffs have in all things conformed themselves to and observed all and singular the said articles and stipulations, conditions, matters and things, which on their part were to be observed and performed according to the form and effect of the said policy, and of the said conditions thereunto annexed, and altho' the stock and fund of the said Company, always from the time

17 of making the said policy hitherto, have been and yet are sufficient to pay to the said plaintiffs the said damage and loss sustained by the said fire; and although sixty days after notice and proof thereof made by said plaintiffs and received by said defendants, at their office, in conformity to the conditions annexed to said policy, had long elapsed before the commencement of this suit, of all which said several premises the said defendants afterwards, to wit: on the day and year last aforesaid at the county aforesaid, had notice and were then and there requested by the said plaintiffs to pay them the said sum of two thousand dollars so by them insured as aforesaid; yet the said defendants, not regarding their said promises and undertakings so by them made as aforesaid, did not, nor would when they were so requested as aforesaid, or at any time before or since, pay the said sum of two thousand dollars, or any part thereof, but have hitherto wholly neglected and refused so to do and still neglect and refuse so to do, to wit: at the county aforesaid.

18 [Here follows the second count, which is like the first, except as to the amount of the policy, which is \$3000 instead of \$2000—this suit being brought upon two policies, one for \$2000 and one for \$3000, making total of \$5000.]

28 [Then follow the common counts, of which a nolle prosequi was subsequently entered.]

29 to 60 [Then follow copies of the policies to the 60th page.]

And afterwards, to wit: on the 29th day of October, A. D. 1857, the said defendants by their attorneys, filed in the office of the Clerk of said Court, their certain plea and demurrer, which is in the words and figures following, to wit:

COOK COUNTY CIRCUIT COURT,

STATE OF ILLINOIS, }  
Cook County, } s. s.

THE MERCANTILE INSURANCE Co., }  
Ads. }  
JOEL H. DIX et al. }

60

And now come the defendants and defend the wrong and injury, when, &c., and say that the plaintiffs ought not to have and maintain their said action by anything in said first count of said declaration contained, because they say that the said first count of said declaration, and the several matters and things therein contained in manner and form as pleaded, are entirely insufficient for the plaintiffs to have and maintain their said action, and this they are ready to verify; wherefore, they pray judgment, &c. And the defendants, for special cause of demurrer, assign the following:

61

1st. That it appears by said count, that, at the time of the fire, the plaintiffs did not own the goods covered by said policy;

2d. That during the continuance of said policy, and before the fire, the said plaintiff Sinclair, in violation of said policy and without the written consent of the said defendants, sold his interest in the goods insured to the said Joel H. Dix and said George J. Harris, and that the same was so owned at the time of the fire;

3d. That said count of said declaration is otherwise insufficient, uncertain and informal, &c. By SHUMWAY, WAITE & TOWNE, Defendants' Attorneys.

[Here follows like demurrer to the second count of the declaration.]

[Here follows plea of general issue to common count.]

And afterwards, to wit: at the November term of said Court, of the year A. D. 1857, to wit: on the 2d day of January, A. D. 1858, the following among other proceedings was had and entered of record therein, to wit:

63

JOEL H. DIX, HORATIO G. SINCLAIR & GEORGE J. HARRIS, use of }  
JAMES E. SOUTHWORTH, ALBERT SLAUSON, VALORUS SOUTHWORTH & }  
HARVEY FARRINGTON, JR. }  
versus }  
THE MERCANTILE INSURANCE COMPANY. }

This day come the said parties, by their attorneys, and by their agreement made here in open court, the demurrer of the said defendants to said plaintiffs' declaration is hereby submitted to the Court, and the Court not being well advised in the premises, takes the same under advisement.

And afterwards, to wit: at the January special term of said Court, to wit: on the 28th day of January, A. D. 1858, the following proceedings among others were had and entered of record in said Court, to wit:

JOEL H. DIX, HORATIO G. SINCLAIR & GEORGE J. HARRIS, to the use of  
JAMES E. SOUTHWORTH, ALBERT SLAUSON, VALORUS SOUTHWORTH  
& HARVEY FARRINGTON, JR.

} Assumpsit.

*versus*

THE MERCANTILE INSURANCE COMPANY.

This day come the said plaintiffs and withdraw their common counts herein, and the Court having heard counsel on the demurrer of the said defendant to said plaintiffs' declaration, and being well advised in the premises, sustain said demurrer. Therefore, it is considered that said defendant do have and recover of said plaintiffs its costs and charges by it in this behalf expended, and have execution therefor.

[Here follows certificate.]

64

Supreme Court of Illinois  
3<sup>d</sup> Division *28 April 1859*

Carl H. Dix et al  
vs  
The Mercantile Insurance Co

Abstract of Record

THE MERCANTILE INSURANCE COMPANY  
vs  
CARL H. DIX et al  
No. 107-167  
FILED FOR RECORD IN THE SUPREME COURT OF ILLINOIS  
APRIL 18 1859  
CLERK

*Filed April 18. 1859*  
*L. Leland*  
*Clerk*

*C. Bentley* *Report*

[Here follows certificate]

charges of it in this behalf expended, and have execution therefor.  
It is considered that said defendants do have and recover of said plaintiffs its costs and  
charges of suit, and that the same be entered in the books of said court, and that the  
said costs and charges be paid by the plaintiffs to the defendants.  
And for cause the said parties and witnesses their common costs herein and the  
charges of suit, and that the same be entered in the books of said court, and that the  
said costs and charges be paid by the plaintiffs to the defendants.

# SUPREME COURT.

STATE OF ILLINOIS.

JOHN H. DIX, ET AL.  
vs.  
MERCANTILE INSURANCE CO. }

## DEFENDANT'S BRIEF.

This is an action of Assumpsit, on a policy of Insurance. The defendant demurred to the plaintiffs' declaration, and the Court below sustained the demurrer, which is the error assigned.

We say the demurrer was properly sustained. The policy of Insurance was issued to Joel H. Dix, Horatio G. Sinclair, and George J. Harris, composing the firm of Dix, Sinclair & Harris, on a stock of groceries. The declaration contains these words: That the said plaintiffs, at the time of making the said policy of Insurance, and from thence until the 12th day of February, A. D. 1857, were interested jointly as co-partners in said insured stock of groceries, to the amount or value of all the moneys by them ever insured, or caused to be insured thereon; that on the said last mentioned day, the interest of said Sinclair therein *was sold and transferred* to said Dix and Harris, and that from the said last mentioned day, until the loss and damage hereinafter mentioned, the said plaintiffs, Dix & Harris, were jointly interested therein, to the amount or value aforesaid, to wit: On the second day of march, A. D. 1857, to wit, at the County aforesaid, was burnt, consumed and destroyed by fire."

By the declaration itself it appears that the policy was made upon, and accepted subject to, the following conditions:

"Policies of Insurance subscribed by this Company shall not be assignable without the consent of the Company, expressed by endorsement made thereon. In case of assignment without such consent, whether of the whole policy or of any interest in it, the liability of the Company in virtue of such policy shall henceforth cease; and in case of any transfer or

In case the above has been printed it  
has been therein a copy to the  
if an examination in deems it  
necessary to make a copy will  
do so hereafter



change of title in the property insured by this Company or any undivided interest therein, such insurance shall be void and cease."

The grounds of the demurrer was "the sale and transfer" by Sinclair, of his interest before the fire, in the goods to Dix & Harris.

The language of the conditions is as broad and comprehensive as human language can be, and it will be impossible, by any process of reasoning, to show that it does not meet and cover this very case. The loss complained of, occurred after the *sale and transfer*. The declaration avers, that there was a "*sale and transfer*," and it is not pretended or averred that it was done by the assent of the defendants.

We cannot see how the action can be sustained, on principle. Has there not been a change and transfer of title, or of an undivided interest therein? The policy says, a transfer or change of title, in the property insured. The declaration avers, that Sinclair sold and transferred his interest in the insured property. Did not that change the title? Before, it was *Dix, Sinclair & Harris*. It changed the title to Dix & Harris. The title was in different persons, from what it was when the property was insured. But the plaintiffs seek to escape this by saying one partner has a right to sell out to the others. But does it make it any the less a change of title? Is it any less a transfer of title? The language is, a sale and transfer. How could Dix & Harris become possessed of the title without a sale or transfer? The declaration avers that there was a sale and transfer. But the matter is placed beyond a question by the balance of the restriction—*or of an undivided interest therein*. There has been a change of title to an undivided interest in the insured property. You may put ever so strict a construction on the language used, and it will meet this case.

This provision is binding upon the parties. This is conceded by the plaintiffs in error; but they say, the language does not mean a sale and transfer from one partner to the others; that some peculiar rule of construction is to be applied to the words in question. We understand language used in a policy of Insurance is to have no forced meaning, but to be considered as used in the ordinary and popular acceptance; and the same as any other mercantile contract.—Arnold's Ins. Vol. I., Page 63, Sec. 41. *Robertson vs. French*, 4 East R. 135. 16 Peters, R. 496.

The language here used is not ambiguous, or obscure, nor technical; and how any one can claim that it does not cover the case at bar, is incomprehensible. It can only be accounted for upon the necessities of the case.

We have thus far treated this question as if it had not been decided. How is it on authority? The clause in question is valid. 5 Hill R. 188. 3 Hill R. 503. 4 New Hampr. R. 171. 31 Maine R. 224. 2 Conn.R. 200. 6 Wend. R. 488. 5 Denio R. 326. 16 Peters, 496. 4 Ohio State R. 285.

# 2. Com R 217-30 Pen R 311 is Chen Insurance  
upon this point

"The policy was made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not otherwise especially provided for," which made condition Number 7 a part and parcel of the policy. 5 Hill R. 190 1 H. Black R. 254. 1 Term R. 710. 3 Hill R. 501. 2 Com. R 200. 31 Maine R. 224. 6 Wend. R. 488. 8 Black R. 50, 150. 2nd Ind. 645. 4 Ohio State R. 285.

Contracting parties have a right to enter into any stipulation not contrary to public policy or positive law—and Courts will enforce them—and the contracts of Companies and Corporations form no exception to this rule.

In construing policies, as in all other contracts, the intentions of the parties as expressed must govern. Parsons on Contracts 494.

12 Mass. R. 74.

2 Wash. C. C. R. 712.

3 Cowen R. 210.

5 Cowen 712.

16 Peters R. 496.

Both these positions are conceded by the plaintiffs in error, but whether conceded or not, they are clearly established by the authorities.

The sale and transfer by Sinclair, to Dix & Harris, by authority as well as principle, avoided the policy, and the plaintiffs cannot recover.

Murdock vs. Chenango Insurance Co., 2nd Com. R. 210.

Fellow vs. Kington 1 Seld. R. 405

16 Peters R. 496.

5 Denio R. 32 6.

3 Denio R. 302.

4 Seld. R. 299.

18 Missouri R. 128.

30 Penn. State R. 311.

The cases in Missouri and Pennsylvania recognize the cases we have cited from the Court of Appeals in the State of New York as law, and were both the cases of partners.

Dix, Sinclair & Harris had no joint interest in the property insured; that joint interest had been destroyed by the sale and transfer from Sinclair to Harris & Dix, an act in which all three concurred. An action cannot be maintained in the name of Dix, Sinclair & Harris, when Sinclair has no interest in the suit, or title in the property destroyed. #

1 Chitty's Pleading, 3. 2nd Com. R. 217. 3 Denio R. 301. 30 Pen R 311

It is fatal to this action, that the declaration discloses that Dix, Sinclair & Harris, the plaintiffs, had no joint interest in the property insured at the time of the loss. The joinder of him with Dix & Harris is fatal. 4 Com. R. 216. 4 Hill R. 187. 5 Wend 200, 203. 1 Hill 71. 3 Denio R. 303. 30 Penn R 311. 2 Com R 217

It is made a condition precedent to the plaintiffs' right to recover, that they all should continue to own the goods. It is a special contract, and the party can only recover upon the special contract, when they have

fulfilled all the conditions thereof on their part to be kept and performed. This principle is not alone applicable to contracts of insurance, but to every other special contract. This action is brought upon the special contract. 5 Denio R. 326.

This condition being part of the policy or contract, though they may be considered technical conditions, the plaintiffs' right to recover depends upon their showing in the declaration a strict performance of them. Parsons on Contracts 497. 13 Conn. R. 533. 5 Denio R. 323. 16 Wend. R. 481. 5 Denio R. 326.

#### REMARKS ON THE ARGUMENT OF THE PLAINTIFFS IN ERROR.

The plaintiffs in error rely mainly on the case of Wilson vs. Genesee Ins. Co, 16 Bar. R. 511. We say it is not to be received as law in this case.

1. Because it is not the law of the State of New York. It is placing the opinion of an inferior Court against a superior Court.

2. We are to look to the highest tribunal in the State, for the law of the State, and that tribunal decides the question with us.

3. Barbour's Reports are not deemed authority. You can find in them any kind of law to meet any case. I would as soon think of citing the decision of a justice of the peace, as settling the law of Illinois, when the Supreme Court had decided otherwise, as to cite Barbour as overruling the Court of Appeals.

4. That case does not present the strange anomaly of a party suing for what, on the record, he admits he had no interest; it is brought in the name of the assignee.

5. Because there is no sense or logic in the reasons given by the Court for his conclusions.

6. If there was reason to support the case, it is not authority on the question at bar; because the restriction is on the assignment of the interest of the insured therein. Hence the words are still more restrictive, and embrace the sale and transfer of an undivided interest.

7. The decision is contrary to the law as established by the highest tribunal of the State of New York, Pennsylvania and Missouri.

8. There is a similar decision in Fellow vs. Kington, 7 Bar. R. 574, with similar reasoning, which is overruled in 1 Selden R. 405, which is made after the case in the Comstock Reports.

9. In 16 Barbour, the fully authorized agent of the Insurance company was notified of the transfer, and assented to it, and told them that no assent of the Company in writing was required. The Court gave a very poor reason for deciding as they did.

10. The Court deciding the case in Barbour, seems to have so little regard to the cases in the Court of Appeals, that they did not deign to

notice them. From this we may infer, either that they did not know of the case, or, secondly, they considered themselves superior to the Court of Appeals.

11. The case concedes that the action, if brought in the name of a party not interested, as in the case at bar, it would be fatal.

12. The Court cannot state, that they have agreed, in effect, that one partner might sell to another; they have agreed to no such thing. It is engrafting upon the policy, a provision which is not in it. You are compelled to add to the language used. I can best dispose of the whole case, and all the argument of the plaintiffs in error, by citing the language used in the 30 Penn. R. 311, which was a sale by one partner to another partner, like the case at bar. Says the Court:

*"It was against alienation the prohibition was hurled, and the mere use of terms will not defeat the intent. That a sale by one partner to another is within the prohibition cannot be doubted; there is no exception in its favor, in the instrument, and the terms used give no room to imply any. This is a legitimate consequence of sale and purchase, and no substitution of terms will make it anything else."*

Again, in 18 Missouri R. 133, which was an action on a policy of insurance on a stock of goods, in favor of two partners, Deher & Brunt. The Court instructed the jury:—

*"If they find, from the evidence, that prior to the fire, Brunt had sold out to Deher all his interest in the stock of goods in the Broadway store, and that, at the time of said fire, Brunt had no interest in said stock of goods, they will find for the defendant."*

It is admitted,—nay, it is alleged in the declaration in this case—that there had been a sale and transfer.

They also, in the case in 23 Barbour 623 as affirming 16 Bar. the question only incidentally came before the Court; and if reason has anything to do with the question at bar, the reasoning of the Court in the 23 Barbour is conclusive upon the case before us. *in our favor*

13. The plaintiffs in error also rely upon Angel on Insurance, and Parson's Mercantile Insurance. These works rely upon 6 Barbour, overruled in Selden, and are not authority, for the reasons in bar given above.

14. Parties might be willing to insure Dix, Sinclair & Harris, and not Dix & Harris. They might have confidence in the one, and not in the others. It was their right to make such a contract to insure or not insure the property, and it was the plaintiffs' duty to notify them of the change of title, and get their assent thereto; and it was their privilege to assent or dissent.

15. They cannot claim any favor on the ground of ignorantly violating the terms of the policy, for there is no pretence that they did so ignorantly: even ignorance is no excuse.

Handy's Reports.

In the conclusion of the argument, it is said, this defence deserves no favor. To answer I quote the Syllabus of 16 Peters, R. 496, which is in these words :

“ The public have an interest in maintaining the validity of the clauses in a policy of insurance against fire. They have a tendency to keep premiums down to the lowest rates, and uphold institutions of this sort, so essential to the present state of the country, for the protection of the vast interest embarked in manufactures and merchandise.” 16 Peters R. 496 Syl.

SHUMWAY, WAITE & TOWNE,  
Attorneys for Defendants in Error.

107

John H. Day & Co

5

Mercantile & Co

Print & Bind

Filed May 23, 1859  
L. Leland  
Clerk

Prepared