Court of Errors and Appeals, [1]

NEW JERSEY.

The Sussex County Mutual Insurance Company, Plaintiffs in Error, *and* Ebenezer B. Woodruff, Defendant in Error.	In Error to the Supreme Court.

David Thompson,
Atty. for Plffs. in Error.

E. W. Whelply,
Atty. for Deft. in Error.

This was an action of covenant upon a lost policy of insurance. The cause was tried at the Morris Circuit, at the [2] Term of October, 1855, and a verdict rendered for the plaintiff for $2163 33. Final judgment was entered on that verdict, at the Term of February of the Supreme Court. The writ of error was returnable March Term, 1856.

The declaration of the plaintiffs is as follows:—

3 NEW JERSEY SUPREME COURT,

OF THE TERM OF JUNE, IN THE YEAR EIGHTEEN HUNDRED AND FIFTY-FOUR.

Morris County, ss.:

The Sussex County Mutual Insurance Company were summoned to answer unto Ebenezer B. Woodruff, in a plea of covenant broken, and thereupon the said plaintiff, by Edward W. Whelply, his attorney, complains, for that whereas the said defendants heretofore, to wit, on the ninth day of March, in the year eighteen hundred and fifty-four, at Newton, to wit, at Morristown, in the said county of
4 Morris, a certain deed, poll or policy of insurance, then and there made and executed, and sealed with the seal of the said defendants, and signed by one John H. Hall, as president of said company, and attested by one Whitfield S. Johnson, as secretary of said company, by the name and description of W. T. Johnson, secretary, and delivered the same to said plaintiff, and which said deed, poll, or policy of insurance, bears date on the year and day aforesaid, and the said plaintiff cannot now bring here into court, be-
5 cause the same has been since the execution and delivery thereof by said defendant's lost, and the same is not now in the possession of said plaintiff, and cannot be found to be produced. Which said deed, poll, or policy of insurance, witnes seth that the said Sussex County Mutual Insurance Company, in consideration of deposit note, No. 2513, for one hundred and eighty dollars, to them paid by the insured thereinafter named, the receipt whereof was thereby acknowledged, did insure Ebenezer B. Woodruff (the plaintiff) against loss or damage by fire, to the amount
6 of two thousand dollars, on his woolen manufactory and machinery therein, in Branchville, according to survey No. 2513, on file in the office of said company.

And the said defendants did in and by said policy of insurance, promise and agree to make good unto the said plaintiff, his executors, administrators and assigns, all such loss or damage not exceeding in amount the sum insured as should happen by fire, to the property above specified, during five years, to wit, from the ninth day of March,

one thousand eight hundred and fifty-four, (at 12 o'clock 7
noon,) unto the ninth day of March, one thousand eight hundred and fifty-nine, (at 12 o'clock noon,) the said loss or damage to be estimated according to the true and actual cash value of said property at the time the same should happen, and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the condition annexed to said policy. Provided always, and it was declared by said policy, that the said defendants should not be liable to make good 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 8
military or usurped power.

And it was thereby further declared, that in case the plaintiff should have any other insurance against loss by fire upon the property by said policy insured not notified to said defendants, and mentioned in or endorsed upon said policy, then the said policy of insurance should be void and of no effect. And if the plaintiff should thereafter make any other insurance on the same property, and should not with all reasonable diligence give netice thereof to said defendants, and have the same endorsed on the said 9
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 said property by said policy insured, whether prior or subsequent to the date of said policy, the said plaintiff should not, in case of loss or damage, be entitled to demand or recover on said policy any greater proportion of the loss and damage sustained, than the amount by said policy insured should bear to the whole amount insured on said property.

And it was further by said policy declared, to be the 10
true intent and meaning of the parties thereto, that in case the above mentioned building should, at any time after making, and during the time said policy should otherwise continue in force, be appropriated, applied, or used, to or for the purpose of carrying on or exercising therein any trade, business or vocation, denominated hazardous, or specified in the memorandum of special hazards, in the proposals annexed to said policy, or for the purpose of either keeping or storing therein any of the articles, goods or mer-

11 chandise, in the same proposals denominated hazardous, or included in the memorandum of special rates, except as in said policy especially provided for, or thereafter agreed by said defendants in writing, to be added to or endorsed on said policy then and from thenceforth, so long as the same should be so appropriated, applied or used, the said policy should cease and be of no force or effect.

And it was further declared that the said insurance was 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
12 to money or bullion, and that the said policy was made and accepted in reference to the survey above mentioned, and the conditions annexed to said policy which were to be used and resorted to in order to explain the rights and obligations of the parties to said policy in all cases not therein otherwise specified, provided for, and subject to the by-laws and regulations of the company made from time to time.

And the said plaintiff in fact says, that the proposals and conditions annexed to said policy of insurance, among other things provided that bakeries, breweries, book-binderies,
13 cotton and woolen manufactories, book mills, coal houses, &c., might be insured at special rates of premium, and are called special hazards, and that the board of directors should have power to judge of the rate of hazards, as they might deem expedient.

That the said company would be liable for losses on property burned by lightning, but not for any loss or damage by fire happening by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power; and that books of account, written securities or
14 other evidences of debt, title deeds, writing, money or bullion, were not deemed objects of insurance.

And that said company reserved the right, in all cases of loss or damage by fire, to repair or rebuild, and goods held in trust or commission, were to be declared and insured as such, otherwise the policy would not cover the property; and jewels, plates, medals, painting, statuary, sculpture and curiosities, were not deemed to be included in any insurance, unless specified in the policy; and that applications for insurance must be in writing, and specify the con-

struction and materials of the building to be insured, con- 15
taining the property to be insured, by whom occupied,
whether as a private dwelling, or how otherwise, its situa-
tion with reference to contiguous buildings, and their con-
struction and materials, whether any manufactory was car-
ried on within or about it, and in case of goods or merchan-
dise, whether or not they were of the description denomin-
ated hazardous.

And if any person insuring any buildings or goods,
should describe the same otherwise than as they really
were, so that the same should be insured at less than the
rate of premium specified in the printed proposals of the
company, such insurance to be void and of no effect. 16

That nevertheless, the company should be bound by sur-
veys made by their surveyors. That policies of insurance
made by this company should not be assignable without
the consent of this company expressed by indorsement
thereon. Notice of such assignment to be given before
any loss should have happened. That all persons insured
by this company, and sustaining loss or damage by fire,
were forthwith to give notice thereof to the company, and
as soon after as possible to deliver a particular account of
such loss or damage by fire, signed with their own hands,
and verified by oath or affirmation, and also, if required, 17
by their books of account, and other proper vouchers, and
until such proofs and declarations were produced, the loss
should not be payable ; also, if there appeared any false
swearing, or fraud, the claimant should forfeit all claim by
virtue of said policy. That notices of all previous insur-
ance on property insured by this company should be given
to them and indorsed on the policy, or otherwise acknow-
ledged by the company in writing, at or before the time of
their making insurance thereon, otherwise the policy made 18
by the company should be of no effect. And in case of
subsequent insurances on property insured by the company
notice thereof, must also, with all reasonable diligence, be
given them, in default whereof, such policy should thence-
forth cease and be of no effect. And in case of loss, the
company should be liable for such ratable proportion of
loss or damage happening to the insurer, as the amount
insured by the company should bear to the whole amount

19 insured thereon, without reference to the dates of the different policies. That payment of losses should be made in sixty days after the loss should have been ascertained and proved; and in case difference should arise touching any loss or damage it might be submitted to the judgement of arbitrators indifferently chosen, whose award in writing should be binding on the parties.

That upon any increase of hazard on property insured, notice must be given to the company, or the policy would be void. That the company should in no case be consider-
20 ed as bound until the note should be accepted, the amount of fees and deposit paid, and the policy delivered over, as by the conditions annexed to said policy of insurance did, among other things, more fully appear.

And the said plaintiff, in fact, further says, that the survey No. 251, referred to in said policy, was made by a surveyor of said company, and bore date on the ninth day of March, in the year eighteen hundred and fifty-four, and that said survey stated the application of said plaintiff to be for insurance against loss by fire by the Sussex County
21 Mutual Insurance Company, to wit, on factory and machinery, of the estimated value of three thousand dollars, to the amount of two thousand dollars. That the premium was one hundred and eighty dollars, and the deposit, per cent. was nine dollars; that it was situated in Branchville, in Sussex County, occupied by Richard A. Ryerson, built of wood, except the lower story, was in good repair, was forty-seven by twenty-six six feet, four stories high. The first story was stone, and was used for fulling and finishing cloth. A stove was used, the pipe went into the chimney,
22 and was secure. Second story was used for twisting and reeling stocking yarn, a stove was used in this room. Third story was used for spinning and carding wool, and a stove in that room, pipe went into the chimney. Fourth story was used for weaving, used a stove in this room also, was one hundred feet from dwelling-house, fifty feet from woodhouse, and within eighty feet from dye-house. No property insured within one hundred feet, used oil for lights.

And the said plaintiff, in fact, further saith, that he, the said plaintiff, heretofore, to wit, on the ninth day of March, in the year eighteen hundred and fifty-four, and before the

execution and delivery of the said deed, poll, or policy of 23
insurance, by the said defendants, in the manner aforesaid, at Newton, to wit, at Morristown, aforesaid, was, and from thence hitherto until the destruction of the said insured premises, by fire, as hereinafter mentioned, continued to be interested in the said woollen factory, and the machinery therein, in said policy of insurance, described and thereby insured to a large amount, to wit, the amount of two thousand dollars, and had and continued to have title to the same during all the time aforesaid.

And said plaintiff, in fact, further says, that the said deposit note, in said policy of insurance mentioned, was 24
heretofore, to wit, on the ninth day of March, in the year eighteen hundred and fifty-four, at Morristown, aforesaid, and before the happening of said loss hereafter mentioned, duly accepted by said defendant. And the deposit per cent. of nine dollars, and all fees, due and payable on said insurance, paid to said defendants; and the said policy delivered over by said defendants to said plaintiff. And that the said policy of insurance has been, since the delivery thereof, accidentally lost by the said plaintiff, and cannot now be found to be produced here in Court. 25

And said plaintiff, in fact, further says, that the said woollen manufactory, and the machinery therein, were afterwards, to wit, on the first day of April, in the year eighteen hundred and fifty-four, at Branchville, aforesaid, to wit, at Morristown, aforesaid, burned down and consumed by fire, which did not happen, or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, whereby the said plaintiff then and there sustained danger and loss to a large amount of money, to wit, to the amount of two thousand 26
dollars, so insured in the said premises so burned and consumed, and that the said premises so insured and described in said policy of insurance, on the day and year last aforesaid when so burned and consumed as aforesaid, were of great value, to wit, of the actual and cash value of three thousand dollars and upwards; and said plaintiff further says, that said premises so mentioned and described in said policy of insurance at the time of making said deed, poll, and policy of insurance, were not, nor at any time since,

have been insured by any other company, person or persons, or body corporate, against loss or damage by fire.

And said plaintiff further says, that the said building in said policy of insurance described has not been at any time since the making, and during the time the said policy continued in force, appropriated or applied or used to or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous or specified in the memorandum of special hazards in the proposals annexed to said policy, or for the purpose of either keeping or storing therein any of the articles, goods or merchandise in the same proposals denominated hazardous or included in the memorandum of special hazards except as specially provided for in said policy of insurance, to wit, at Morristown aforesaid.

And said plaintiff in fact says, that said building and machinery in said policy described from the time of the making of said policy of insurance until the happening of the said loss by fire, as aforesaid, were used and continued to be used for those uses and purposes, and for carrying on and exercising therein the business mentioned and specified in the said survey in said policy mentioned, and for no other business or purpose.

And said plaintiff, in fact, further says, that before the making of said policy of insurance, to wit, on the ninth day of March, in the year eighteen hundred and fifty-four, at Newton, to wit, at Morristown aforesaid, application was made to said defendants in writing for said insurance, and that a survey of said premises was made by a surveyor of said Company, who made the survey and description of said premises in said policy of insurance referred to, and that said application truly specified the construction and materials of said building, by whom occupied, and whether as a private dwelling or otherwise, and the situation with respect to other and contiguous buildings, and their construction and materials, and that a manufactory was carried on within it.

And said plaintiff, in fact, further says, that said plaintiff afterwards, to wit, on the second day of April, in the year eighteen hundred and fifty-four, at Newtown, to wit, at Morristown aforesaid, and forthwith after the destruction

of said woolen manufactory and the machinery therein by 31
fire aforesaid, gave notice to said defendants of said destruction of said insured premises by fire, and delivered in to said defendants a particular account of such loss and damage sustained by said plaintiff by reason of such destruction of said insured premises by fire, signed with his own hand and verified by oath.

And said plaintiff, in fact, further says, that said defendants after the happening of said loss, and after the same had been ascertained and proved heretofore, to wit, on the first day of August, in the year eighteen hundred and fifty-four, at Morristown aforesaid, specially notified said plaintiff that 32
they would not pay or satisfy said plaintiff for said loss or damage by fire by him sustained as aforesaid, or any part thereof.

And the said plaintiff, in fact, further saith, that the said defendants at the time of the destruction of the said premises by fire in manner aforesaid, to wit, on the said first day of April, in the year eighteen hundred and fifty-four, at Morristown aforesaid, had stock, funds and premium notes liable to assessment to pay losses insured against by said Company, sufficient to pay to this said plaintiff the said sum of two thousand dollars, the amount of the dam- 33
ages sustained by said plaintiff by reason of the destruction of the said insured premises by fire in manner aforesaid, the said defendants have ever since the day and year aforesaid been, and still are, possessed of funds of said Company sufficient to make such payment.

And the said plaintiff, in fact, further saith, that after the said loss had happened by fire in manner aforesaid, and had been ascertained and proved in manner aforesaid, and after the period of sixty days had elapsed from and after the ascertaining and proving such loss as aforesaid, he, the said plaintiff, afterwards, to wit, on the first day of July, in the 34
year eighteen hundred and fifty-four, at Morristown aforesaid, demanded of said defendants payment of the said sum of two thousand dollars in said policy mentioned and thereby agreed to be paid in the event of sustaining such loss as aforesaid by said plaintiff, and said defendants then and there refused to pay the same, or any part thereof, to said plaintiff, to wit, at Morristown aforesaid.

35 And the said plaintiff, in fact, further says, that although he, the said plaintiff, hath in all things conformed himself to and observed all and singular the articles, stipulations, conditions, matters and things which on his part were to be observed and performed according to the force, form and effect of the said deed and policy of insurance and proposals :

Yet the said plaintiff says, that the said defendants have not paid nor made good to the said plaintiff the said loss or damage by him sustained as aforesaid, or the said sum of
36 two thousand dollars in said policy mentioned, but have hitherto (although often requested so to do) wholly neglected and refused so to do, and still neglect and refuse, and the same and every part thereof are wholly unpaid and unsatisfied to the said plaintiff, to wit, at Morristown aforesaid, contrary to the force, form and effect of the said deed or policy and of the covenant of the said defendants so made as aforesaid, to wit, at Morristown aforesaid.

Also, for that whereas the said defendants heretofore, to
37 wit, on the ninth day of March, in the year eighteen hundred and fifty-four, at Newton, to wit, at Morristown, in the said county of Morris, a certain other deed, poll or policy of insurance then and there made and executed and sealed with the seal of the said defendants and signed by one John H. Hall as president of said Company, and attested by one Whitfield S. Johnson as secretary of said Company, by the name and description of W. S. Johnson, Secretary, and delivered the same to said plaintiff, which said deed, poll or policy of insurance bears date on the year and day aforesaid, and the said plaintiff cannot now bring here into court, because the same has been since the
38 execution and delivery thereof by said defendants lost and the same is not now in the possession of said plaintiff, and cannot be found to be produced.

Which said deed, poll, or policy of insurance witnesseth, that the said The Sussex County Mutual Insurance Company, in consideration of deposit note No. 2513, for one hundred and eighty dollars to them paid by the insured hereinafter named, to the receipt whereof was thereby acknowledged, did insure Ebenezer B. Woodruff, (the plaintiff,) against loss or damage by fire to the amount of two thou-

and dollars on his woolen manufactory and machinery therein, in Branchville, according to survey No. 2513, on file in the office of said company; and the said defendants did, in and by said policy of insurance, promise and agree to make good unto the said plaintiff, his executors, administrators and assigns, all such loss or damage not exceeding in amount the sum insured, as should happen by fire to the property above specified, during five years, to wit, from the ninth day of March, one thousand eight hundred and fifty-four, (at twelve o'clock at noon,) until the ninth day of March, one thousand eight hundred and fifty-nine, (at twelve o'clock at noon,) the said loss or damage to be estimated according to the true and actual cash value of said property at the time the same should happen, and to be paid within sixty days after due notice and proof thereof made by the insured, in conformity to the conditions annexed to said policy; provided always, and it was declared by said policy that the said defendants should not be liable to make good any loss or damage by fire which might happen to take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power.

And it was thereby further declared, that in case the plaintiff should have any other insurance against loss by fire upon the property by said policy insured, not notified to said defendants, and mentioned in or endorsed upon said policy, then the said policy of insurance shall be void and of no effect.

And if the plaintiff should thereafter make other insurance on the same property, and should not with all reasonable diligence give notice thereof to said defendants, and have the same endorsed on the said policy of insurance, or otherwise acknowledged by them in writing, the said policy should cease and be of no effect.

And in case of any other insurance upon the said property by said policy insured, whether prior or subsequent to the date of said policy, the said plaintiff should not, in case of loss or damage, be entitled to demand or recover on said policy any greater portion of the loss or damage sustained than the amount by said policy insured should bear to the whole amount insured on said property. And

it was further by said policy declared, to be the true intent and meaning of the parties thereto, that in case the above mentioned building should at any time after the making and during the time said policy should otherwise continue in force, be appropriated, applied or used to or for the purpose of carrying on or exercising therein, any trade, business or vocation denominated hazardous, or specified in the memorandum of special hazards in the proposal annexed to said policy, or for the purpose of either keeping or storing therein any of the articles, goods or merchandise in the same proposals denominated hazardous, or included in the memorandum of special rates, except as in said policy specially provided for. or thereafter agreed by said defendants in writing to be added to or endorsed on said policy, then, and from thenceforth, so long as the same should be so appropriated, applied and used, the said policy should cease and be of no force or effect.

And it was further declared, that the said insurance was not intended to apply to or cover any books of account, written securities, deeds or other evidence of title to lands, nor to bonds, bills, notes or other evidences of debt, nor to money or bullion, and that the said policy was made and accepted in reference to the survey above mentioned, and the conditions annexed to said policy, which were to be used and resorted to in order to explain the rights and obligations of the parties to said policy in all cases not therein otherwise specially provided for and subject to the by-laws and regulations of the company from time to time.

And the said plaintiff in fact says, that the proposals and conditions annexed to said policy of insurance provided that goods that are not hazardous were to be insured at the same rates as the buildings in which they are contained, and were such as are usually kept in dry goods stores, including household furniture and linen, cotton in bales, vats and yarn, coffee, flour and indigo, potash, rice, sugar, teas, spices, paints ground in oil, and thrashed grain; also boots, shoes, saddles, harness, leather, hides, millinery, tailoring stock, ready-made clothes, &c.

And it was further declared in the conditions and proposals annexed to said policy, that the following trades,

goods. wares and merchandise, were considered hazardous, 47
and were charged from one-half to one per cent. in addition to the premium named for each class, viz.: Hat manufactories, tavern-keepers, grocers, tabacco manufactories, watchmakers, blacksmith shops, bark sheds, tanneries, apothecaries or druggists, and barns and stables detached.

And it was further declared, that flour mills, fulling and carding mills, dyers, coopers, printing offices, cabinet-makers, carpenters' shops, carriage and wagon makers' shops, buildings erecting and repairing, foundries, acadamies, manufactories requiring the use of fire, that were deemed extra hazardous, were charged from six to ten per cent.

And said plaintiff in fact says, that said proposals and 48
conditions annexed to said policy also provided, that bakeries, breweries, bookbinderies, cotton and woolen manufactories, bark mills, coal houses, &c., might be insured at special rates of premium; that gunpowder was not insurable unless by special agreement; and that hay and grain in barracks, or stacks and wagon houses detached, were charged two per cent.; barns and stables in villages, and belonging to taverns, four to six per cent. That nevertheless, the Board of Directors should have power to judge of the rate of hazards as they might deem expedient, and that no more than three thousand dollars should be taken on any one risk, nor more than two thousand dollars on any 49
special or extra hazard.

That the said company would be liable for loss on property burnt by lightning, but not for any loss or damage by fire happening by means of an invasion, insurrection, riot or civil commotion, or of any military or usurped power; and that books of accounts, written securities, evidences of debt, title deeds, writings, money or bullion were not deemed objects of insurance. And that the said company reserved the right in all cases of loss or damage by fire to repair or to rebuild; and goods held in trust, or on com- 50
mission, are to be declared and insured as such, otherwise the policy would not cover the property; and jewels, plate, medals, paintings, statuary, sculptures and curiosities were not deemed to be included in any policy of insurance unless specified in the policy; and that applications for insurance must be in writing, and specify the construction and ma-

terials of the building 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 was carried on within or about it, and in case of goods and merchandise, whether or not they were of the description denominated hazardous, and if any person insuring any building or goods should describe the same otherwise than as they really are, so that the same be insured at less than the rate of premium specified in the printed proposals of the company, such insurance to be void and of no effect.

Nevertheless the company should be bound by surveys made by their surveyors: That policies of insurance made by this company should not be assignable without the consent of the company expressed by indorsement thereon, notice of such assignment to be given before any loss shall have happened.

That 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 as possible to deliver in a particular account of such loss or damage, signed with their own hands and verified by oath or affirmation. And also, if required by their books of account and other proper vouchers, and until such proofs and declarations are produced, the loss should not be payable. Also if there appeared any fraud or false swearing, the claimant should forfeit all claim by virtue of this policy.

That notices of all previous insurance upon property insured by this company should be given to them and endorsed on the policy or otherwise acknowledged by the company in writing, at or before the time of their making insurance thereon, otherwise the policy made by this company should be of no effect. And in case of subsequent insurances on property insured by this company, notices thereof must also with all reasonable diligence be given to them, in default whereof such policy should thenceforth cease and be of no effect.

And in case of loss this company should be liable for such rateable proportion of loss or damage happening to the insured, as the amount insured by this company should bear

to the whole amount insured thereon without reference to 55
the dates of the different policies.

That payment of loss should be made in sixty days after the loss shall have been ascertained and proved. And in case difference should arise touching any loss or damage, it might be submitted to the judgment of arbitrators indifferently chosen, whose award in writing should be binding on the parties.

That upon any increase of hazard in property insured, notice must be given to the company or the policy would be void. That the company should in no case be considered as bound until the note should be accepted, the amount of 56
fees and deposit paid, and the policy delivered over as by the condition annexed to said policy of insurance, did among other things more fully appear. And the said plaintiff in fact further says, that the survey No. 2513 referred to in said policy was made by a surveyor of said company, and bore date on the ninth day of March, in the year eighteen hundred and fifty-four.

And that said survey stated the application of said plaintiff to be for insurance against loss by fire by the Sussex County Mutual Insurance Company, to wit, on factory and 57
machinery, of the estimated value of three thousand dollars to the amount of two thousand dollars.

That the premium was one hundred and eighty dollars, and the deposit per cent. was nine dollars; that it was situated in Branchville in Sussex County, occupied by Richard A. Ryerson; built of wood, except the lower story; was in good repair; was forty-seven by twenty-six feet; four stories high.

The front story was stone, and was used for fulling and finishing cloth. A stove was used; the pipe went into the 58
chimney and was secure. Second story was used for twisting and reeling stocking yarn; a stove was used in this room. Third story was used for spinning and carding wool, and a stove in that room; pipe went into the chimney. Fourth story was used for weaving, used a stove in this room also; was one hundred feet from dwelling-house, fifty feet from wood-house, and within eighty feet from dye-house. The water ran through the factory and to the

59 dye-house; no property insured within one hundred feet; used oil for light.

And the said plaintiff in fact further says, that he, the said plaintiff, heretofore, to wit, on the ninth day of March, in the year eighteen hundred and fifty-four, and before the execution and delivery of the said deed poll or policy of insurance by the said defendants in manner aforesaid, at Newton, to wit, at Morristown aforesaid, was, and from thence hitherto, until the destruction of the said insured premises by fire, as hereinafter mentioned, continued to be interested in the said woolen factory and the machinery therein in said policy of insurance described, and thereby
60 insured to a large amount, to wit, the amount of two thousand dollars, and had, and continued to have title to the same, during all the time aforesaid.

And said plaintiff in fact further says, that the said deposit note in said policy of insurance mentioned, was heretofore, to wit, on the ninth day of March, in the year eighteen hundred and fifty-four, at Morristown aforesaid, and before the happening of said loss hereinafter mentioned, duly accepted by said defendants, and the deposit per cent. of nine dollars, and all fees due and payable on said insurance paid to said defendants. And the said policy de-
61 livered over by said defendants to said plaintiff, and that the said policy of insurance has been since the delivery thereof accidentally lost by the said plaintiff, and cannot now be found to be produced here in court.

And said plaintiff in fact further says, that the said woolen manufactory and the machinery therein, were afterwards, to wit, on the first day of April, in the year eighteen hundred and fifty-four, at Branchville aforesaid, to wit, at Morristown aforesaid, burned down and consumed by fire which did not happen or take place by means of any inva-
62 sion, insurrection, riot, or civil commotion, or of any military or usurped power, whereby the said plaintiff then and there sustained damages and loss to a large amount of money, to wit, to the amount of two thousand dollars, so insured in the said premises so burned down and consumed, and that the said premises so insured and described in said policy of insurance, on the year and day last aforesaid when so burned and consumed as aforesaid, to wit, at Morris-

town aforesaid, were of great value, to wit, of the actual 63
cash value of three thousand dollars and upwards. And said plaintiff further says that said premises so mentioned and described in said policy of insurance were not, nor at any time since, have been insured by any other company, person or persons, or body corporate against loss or damage by fire.

And said plaintiff further says, that the said building in said policy of insurance described, has not been at any time since the making of and during the time said policy continued in force, appropriated or applied, or used to or for the purpose of carrying on or exercising therein any trade, 64
business or vocation denominated hazardous, or specified in the memorandum of special hazards in the proposals annexed to said policy, or for the purpose of either keeping or storing therein any of the articles, goods, or merchandise in the same proposals denominated hazardous or included in the memorandum of special hazards, except as specially provided for in said policy of insurance, to wit, at Morristown aforesaid.

And said plaintiff in fact says, that said buildings and machinery in said policy described, from the time of the 65
making of said policy of insurance until the happening of the said loss by fire as aforesaid, were and continued to be used for those uses and purposes, and for carrying on and exercising therein the business mentioned and specified in the said survey and policy and for no other business or purpose. And the plaintiff in fact further says, that the defendants, after the destruction of the said building and machinery in said deed poll or policy of insurance mentioned, had immediate notice and knowledge of the said destruction of said insured premises by fire, and that the said 66
building and machinery were wholly burned up and consumed by fire, and that the actual cash value thereof exceeded the sum of two thousand dollars, and of the loss and damage sustained by said plaintiff by reason of the destruction of said insured premises. And having such notice and knowledge afterwards, to wit, on the second day of April, in the year eighteen hundred and fifty-four, at Morristown aforesaid, waived the delivery to them by said plaintiff of a particular account of the loss and damage sus-

67 tained by such plaintiff by reason of such destruction of said insured premises by fire, signed by the hand of said plaintiff and verified by oath, and the performance by the said plaintiff of the provisions in that behalf contained in the said conditions annexed to said policy of insurance. And the said plaintiff did afterwards, to wit, on the day and year last aforesaid, at Morristown aforesaid, deliver to said defendants an account of the loss and damage sustained by him by reason of such destruction of said insured premises, which account was then and there accepted and received by the said defendants as a full compliance by said
68 plaintiff with the provisions in the said conditions annexed to said policy contained.

And the said plaintiff in fact further says, that after the destruction of said insured premises by fire in manner aforesaid, and after the expiration of sixty days after said loss sustained by reason of the destruction of the insured premises had been ascertained and proved, to wit, on the first day of July, in the year eighteen hundred and fifty-four, at Morristown aforesaid, the said plaintiff demanded of the said defendants payment of the said sum of money, in and
69 by said policy agreed to be paid to the said plaintiff on the happening of said loss, to wit, of the said sum of two thousand dollars, and the said defendants then and there had sufficient stock, funds and money, the property of said defendants, wherewith to make such payment according to the provisions of said policy, yet the said defendants, then and there wholly refused to pay the same or any part thereof, to said plaintiff.

And said plaintiff further says that, although he, the said
70 plaintiff, hath in all things conformed himself to and observed all and singular, the articles, stipulations, conditions, matters and things, which on his part were to be observed and performed according to the form and effect of the said deed or policy and of the said proposals; yet the said plaintiff says that the said defendants have not paid or made good to the said plaintiff the said loss and damage by him sustained as aforesaid, but the same and every part thereof are wholly unpaid and unsatisfied to the said plaintiff, to wit, at Morristown aforesaid, contrary to the force, form and effect of the said deed, or policy, and of the co-

venant of the said defendants, made as aforesaid, to wit, at 71
Morristown aforesaid. And also the said plaintiff says that the said defendants, although often requested so to do, to wit, at Morristown aforesaid, have not kept with the said plaintiff the covenant aforesaid, but have broken the same, and to keep the same with the said plaintiff have hitherto wholly refused and still do refuse, to the damage of said plaintiff, four thousand dollars, and therefore he brings suit, &c.

E. W. Whelply,
Atty.

New Jersey, ss.:
Ebenezer. B. Woodruff puts in his place Edward W. 72
Whelply, his attorney, against the Sussex County Mutual Insurance Company, in a plea of covenant broken.

The defendants pleaded the following pleas, to wit:

And the said defendants, by David Thompson, their attorney, come and defend the wrong and injury, when, &c., and say, that the said deed, poll or policy of insurance in the said declaration mentioned, is not the deed of the said defendants, and of this they put themselves upon the country, &c. And for a further plea in this behalf the said defendants, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the said plaintiff 73
ought not to have or maintain his aforesaid action thereof against them, because they say that the said woolen factory and machinery therein in the said declaration mentioned, and supposed to have been burnt, consumed, lost and destroyed by fire, were not nor were any part thereof, burnt, consumed, lost or destroyed by fire in manner as the said plaintiff hath in that behalf alleged, and of this they, the said defendants, put themselves upon the country, &c.

And for a further plea in this behalf the said defendants by leave of the court for this purpose first had and obtained according to the form of the statute in such case made and provided, say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said plaintiff did not forthwith give notice

74 to the said company, the said defendants, of the loss he had sustained, as in his declaration mentioned, and that he, the said plaintiff, did not, as soon after the said loss as was possible, deliver to the said defendants a particular account of such loss and damage as the nature of the case would admit of, signed with his hand and verified by oath or affirmation, in manner and form as the said plaintiff hath above alleged, and of this the said defendants put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants
75 by leave of the court, here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said plaintiff did not as soon as possible, after the said loss and damage in his said declaration mentioned, deliver in as particular an account of such loss or damage as the nature of the case would admit of in manner and form as the said plaintiff hath above thereof alleged. Nevertheless for plea in this behalf, the said de-
76 fendants say that in the claim made for the said loss and damage in the said declaration mentioned and set forth, there appeared to be fraud within the true intent and meaning of the said condition referred to, and annexed to the said deed, poll or policy of insurance, that is to say fraud in stating the nature, character and value of the said woolen manufactory and machinery therein, and in said declaration supposed to have been burnt, consumed and destroyed by fire contrary to the said condition referred to, and annexed to the said deed, poll or policy of insurance, and this the defendants are ready to verify, wherefore they pray judge-
77 ment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them &c. &c. And the said plaintiff, as to the said several pleas of the said defendants, by them firstly, secondly, and thirdly above pleaded, and whereof they have put themselves upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendants, by them fourthly above pleaded, says that by reason of anything in that plea alleged, he ought not to be barred or precluded from having or maintaining his afore-

said action against the said defendants, because he says 78
that in the claim, in the said declaration mentioned to have been made and therein set forth, for the said loss and damage in said declaration mentioned, there did not appear to be fraud within the true intent and meaning of the said condition referred to, and annexed to the said deed poll or policy of insurance, or any fraud in stating the nature, character and value of the said woolen manufactory and machinery therein stated to have been burnt, consumed and destroyed by fire, in manner and form as in that plea alleged, and this the said plaintiff prays may be inquired of, by the country, and the said defendants doth the like.

At the trial the following bills of exceptions were sealed: 79

NEW JERSEY SUPREME COURT,

Morris Circuit, Oct. T., 1855.

The Sussex Mutual Insurance Company,
ads.
Ebenezer B. Woodruff.

Be it remembered, that at a Circuit held at Morristown, in and for the county of Morris, on the first Tuesday of October, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable Elias B. D. Ogden, one of the justices of the Supreme Court of judicature of the State of New Jersey, the above named cause came on to be tried before a jury, duly empanneled and 80
sworn, to try the said cause, in the presence of the parties and their respective attorneys, upon the issues made upon the pleadings in said cause *prout*, the same and thereupon.

Whitfield S. Johnson, a witness for the plaintiff said: "I reside in Newton, and am secretary and treasurer of

81 the Sussex County Mutual Insurance Company ;" and being shown two papers, one purporting to be a survey of the property consumed by fire, and the other the premium note *pro ut*, the same marked C, and D, he said, " This one is the survey that was filed in my office ; it is in the handwriting of Mr. Everett, who is one of the surveyors of the company, and was so at the time it was made, and the other is the premium note I received ; the handwriting is Mr. Everett's ; some of the figures are mine ; Mr. Everett lives about a mile from the premises, and lived there at the time ; I have heard that the building was burnt, but
82 never saw the ruins ; the plaintiff in company with Mr. Whelply called at my office shortly after the loss, and inquired about the policy ; our practice is to keep a loose copy of the policies issued—not a regular record—and put the copy of the policy, the premium note and the survey altogether, and file them away according to their numbers ; I don't know where these papers were found when asked for ; in the course of our interview it came out that Dr. Woodruff had not the policy, and I said I had supposed the policy had been issued and sent ; I do not recollect of speaking of Mr. Depue, nor of saying who paid the money;
83 I said I thought it was sent by some person from Branchville ; don't know whether I had been informed that plaintiff had not the policy or not ; think I had heard such a rumor ; have no recollection as to what was said about its having been sent by mail or otherwise, if anything ; I supposed the policy had been signed and issued by the company ; the policy was not sent to Everett ; I have looked in my office for the policy since I was subpœnaed, but did not find it ; I supposed the policy was issued ; my practice is to send the policy to our agent ; in this case
84 it was not sent to Mr. Everett ; but the premium note was to be executed in my office ; I was absent from home, and on my return found the survey and learned that Ryerson had been there, and wished the policy made out, and said the plaintiff would be up ; Dr. Woodruff did come and sign the note, and said Ryerson would come and pay the premium ; Ryerson came and signed the note, but paid no money, said he would send it down ; on Friday it came and I so entered it ; I think the premium note was signed

by plaintiff on Tuesday or Wednesday of the first week of April court, and on Thursday by Ryerson; the draft of the policy is first made and the original policy is then made from it; nothing more was to be done by the insured; I believe he had complied with all the rules; I have no particular reason to doubt that the policy was made out and issued; the endorsement on the draft should be the same as on the policy; the date April 6th upon the draft is the time the money was paid; I used the mark April 6th to show that that was the time the policy was issued or rather that the matter was complete and disposed of; I can't say positively there was any policy issued in this case; I never delivered it to Dr. Woodruff; the endorsement on the survey of the name and number is in Mrs. Johnson's handwriting; I think the money for premium was handed to me in person; the affidavit of plaintiff of the loss was sent in to the company, April 26th, 1854; the fire was on the 21st of April; the affidavit is in the plaintiff's handwriting and was made in my office; I told him the particulars of what was necessary and he wrote it; if I had seen any material defect I should have mentioned it; I wrote to the doctor after the board declined to pay the loss, informing him of its action; I have the minutes of the board here." 85 86 87

Plaintiff here offered and read in evidence the survey and premium note, and also the affidavit of plaintiff, of the loss.

Plaintiff also offered in evidence the draft of the policy which being objected to was overruled.

"I have no reason to doubt that the policy was issued and sent; we have a common seal with which we seal the policy; the President signs the policies in blank, and then I issue them whenever the conditions are completed." 88

Ebenezer B. Woodruff, the plaintiff, was sworn to prove the loss of the policy of insurance, and testified as follows: "I am the plaintiff in this cause; I never received any policy of insurance on the mill of Ryerson at Branchville; I have no such paper in my custody or under my control; I have looked over my papers for it."

89 The plaintiff thereupon offered again in evidence the draft of the policy of Insurance, to which the defendants by their counsel objected, on the ground that there was not sufficient proof of search for, and of the loss of the original policy of insurance, if one was issued to justify the reception of a copy, but the court held and decided the proof of such loss was sufficient, and allowed the said draft to be read in evidence to the jury, to which decision and ruling of the court the defendants prayed a bill of exceptions, and that the same might be sealed, and it is sealed accordingly.

90 E. B. D. Ogden. [seal.]

Joshua Depue, a witness sworn for the plaintiff, said: I live at Branchville, about one quarter of a mile from Ryerson's mill; I am somewhat acquainted with the premises; they were burnt, I think, the last of March or first of April, 1854; I was at court that spring, and I think it was after court; I saw it while burning; it was somewhat advanced when I first saw it; it was just in the dusk of the evening; I was about a mile off at first; I stayed till it was burnt down; can't say what the building was worth;
91 should think, with the machinery, it was probably worth two thousand dollars; I took some money to Mr. Johnson, the secretary of the company, for Richard A. Ryerson; he gave it to me, but I can't tell the sum, nor the time I took it; it was neatly put up, and he told me to hand it to Mr. Johnson, and he counted it and said it was all right; I don't think any allusion to the policy of insurance was ever made in my presence; I never got any policy; the fire happened, I should think, from two to three weeks after the
92 money was taken; I think the machinery was not all burnt up; I did not think that that saved was of much value; I am a farmer; I was in the mill occasionally, but not very frequently; when I first came to the fire, the whole upper part was pretty much in flames; there were from fifty to one hundred persons present when I got there; they were not doing much at the time.

Being *cross-examined*, he said: I have no particular acquaintance with the value of the machinery; I have only a general idea as to the value of the property; saw Ryer-

son there moving about briskly; I don't know what ma- 93
chinery was in the building at the time; the building was all burned down except the water wheel; the water passed through the second story of the building; the building has three stories besides the attic.

Whitfield S. Johnson, being recalled by plaintiff, said: I have no recollection of Mr. Depue's paying me the mo ney; some person from that neighborhood paid it, but do not recollect who it was.

Samuel A. Everett, a witness for plaintiff, said: I was 94
surveyor for the defendants in 1854, and made the survey of this mill; the one showed me is the one I made; I supposed the building and machinery were worth over two thousand dollars; from the opinion of others, I thought them worth three thousand dollars; I fixed no separate value on the building and machinery; I supposed the mill and machinery could not be replaced for $3000; I heard of the loss the same evening it occurred; I was not at the fire; I think it was the 19th or 20th of April, 1854; I did not give notice to the company. 95

Being *cross-examined*, the defendants, by their counsel, asked this question, to wit:

Question. At whose instance did you make the survey of the mill?

To which question the plaintiff, by his counsel, objected, and the said court thereupon declared the said question to be illegal, and overruled the same, and would not allow it to be put to the witness; to which decision of the s id court the defendants, by their counsel, prayed a bill of excep- 96
tions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [seal.]

The witness then said: When I made the survey, I gave it to Richard A. Ryerson; I did nothing in reference to the survey at the instance of Dr. Woodruff; can't say that

97 either Ryerson or Dr. Woodruff represented to me the value of the machinery; had often been in the mill, and was acquainted with it.

David Thompson, a witness sworn by the plaintiffs, said: I was one of the directors of the company in 1854; I was appointed on a committee to confer with the plaintiff; the committee were James R. Hull, William H. Johnson and myself; some of us wrote to the plaintiff to inquire as to his title to the premises; the affidavits of the loss first disclosed to us the fact that the property belonged to Ryerson; plaintiff came up and showed us the agreement, and
98 I had it for some days; our object was to know what title he had; no other party claimed the benefit of the insurance; there was nothing said by us about the policy not having been issued, or that it was lost; no other ground of objection mentioned, except that it was a mortgage interest, that I recollect of."

Whitfield S. Johnson, being recalled by plaintiffs, said: The first I heard about the insurance was that Ryerson had been at my office; Dr. Woodruff was the first one who spoke to me personally about it; he may have spoken of it
99 in Morristown, but if so, I don't recollect it.

Edward W. Whelpley, a witness sworn for plaintiff, said: I went to Newton and Branchville, before this suit was brought, with Dr. Woodruff, in reference to his loss by the fire; I went with him to the office of the company to ascertain about the policy, and wanted to know where the policy was, and the premium note, and whether the premium had been paid, in order to determine what suit to
100 bring; I told Mr. Johnson we were stockholders, and had a right to see the papers, and if he did not let us see the papers, we would get them by law; in the course of the interview, Mr. Johnson stated to us several times that he had either sent the policy to Dr. Woodruff by mail or by private hand, he thought by mail; the doctor said he had never received any such policy; this was after the statement of the loss had been presented to the company; at the interview at Mr. Thompson's, the objections to paying the

loss were that they did not think they had any right to pay it, that he held a mortgage as collateral, and ought first to resort to his other securities, and also that they thought the building was set on fire; no objections were made to the statement of the loss; I showed them the agreement, and, at Mr. Thompson's request, left it with him for a few days; the suit was brought in its present shape because of Mr. Johnson's declaration that the policy was issued. 101

Being *cross-examined*, he said: My first interview with Mr. Johnson was in the summer; it was after we were satisfied that they were not going to pay; Mr. Johnson did not express any doubts as to whether the policy had been issued; the doubt was whether it was sent by mail or by private hand; I have no recollection of his saying he might have handed it to Mr. Ryerson; I have made no examination to see if any letter sent from Newton at that time had miscarried. 102

The assignment of certain mortgages to Dr. Woodruff by Richard A. Ryerson, dated 18th May, 1852, to which Mr. Whelpley was a subscribing witness, having been proved by him, was then offered and read in evidence on the part of the plaintiff *pro ut* the same. 103

William Space, a witness sworn for plaintiff, said: "I reside in Newton township; was acquainted with the factory that was burnt."

Being shown the mortgage from Calvin Price to Richard A. Ryerson, mentioned in the above assignment, he said: "The factory was situate on the lot described in this mortgage." 104

Being *cross-examined* by defendant, he says: "I don't know as I have any interest in this controversy; I hold an assignment from Richard A. Ryerson of the claims in Dr. Woodruff's hands, after the Doctor is paid; if there is anything over in the Doctor's hands, after paying him, it goes to me; I have given the plaintiff a bond of indemnity to

105 secure to him all demands against Ryerson; I think the bond was made in March, 1853, before the fire."

Being shown the bond of indemnity by counsel of plaintiff, he said: "This is the bond of indemnity I referred to."

Whitfield S. Johnson, being recalled by plaintiff, said: I think I first heard of the fire on the morning after it occurred; I think James H. Struble informed me of it; I suppose the date or memorandum of the time of the fire made by me the 21st April, 1854, is correct; the executive committee sent up persons to examine as to the loss; I think Mr. Beach and Mr. Everett were to make the in-
106 quiries; I think the committee was not sent before I saw Dr. Woodruff; the issuing of policies is intrusted to a committee of the Board: in cases of ordinary risk in the county, I issue them, but extra risks go before the Board; this risk is considered extra hazardous.

Being *cross-examined*, he said: "I did not know Dr. Woodruff was insuring a mortgage interest, but took it as it appeared on the paper or survey."

Witness further said: "I had perfect confidence in Dr. Woodruff, and from our knowledge of Ryerson, my impression is the Board would not have insured Ryerson on that
107 property; if I had known that Ryerson was really interested in the insurance, and the man standing between, I don't think I would have issued a policy of insurance to Dr. Woodruff, without the order of the Board or their committee."

Re-examination:—"I can't say what the custom was as to submitting an application for insurance of a mortgage interest to the Board; I think there is no special rule about it, but it would be out of the ordinary course of things, and I should submit it; I remember but two or three cases of that kind, and I think they were submitted to the Board."

Quest. by Court:—Why was Ryerson's name put on the note?

Ans. "When Dr. Woodruff called, I understood Ryer- 108
son was to sign the note; I knew the money came from Ryerson; Ryerson had a previous insurance on the property, which expired about a year before I think; I have no recollection of Dr. Woodruff's saying he wished to insure a mortgage interest; I would not say he did not; I can only say, if I had so understood it, I think I would have excepted to it, and suggested a change; I would not have insured Ryerson, because I had no confidence in him; his character is such I would be afraid he would burn it down; I might have insured his dwelling-house, but not a factory like this, for want of confidence in his integrity, 109
and on account of his carelessness."

Being again *cross-examined*, he said: "Every note is required to have a name on it as security; the reason I would not have insured the mill for Ryerson, is that I feared both his integrity and carelessness."

Plaintiff here read in evidence a resolution of the directors of the Insurance Company, on page 94 of their book of Minutes, under date of June 24th, 1854, as follows:

Resolved, That hereafter no insurance be made for a 110
mortgagee on his mortgage interest.

Plaintiff having rested, the defendants by their counsel moved the said Court that the said plaintiff be called, and that judgment of non suit be rendered against him upon the grounds—

First.—That plaintiff had failed to prove either the execution, delivery or loss of the policy of insurance or deed by him declared upon, and that the evidence thereof offered by the plaintiff was not sufficient to be submitted to the jury.

Second.—Because the evidence introduced by the plaintiff showed such concealment and misrepresentation by the plaintiff of his interest in the premises alleged to have been insured as amounted to a legal fraud, and rendered

111 the policy void in law, if one had been issued and deliver ed to him.

Third.—Because the plaintiff had failed to prove such interest in and title to the premises as averred in his declaration.

Which motion, after argument, the said Court overruled, and decided that there was sufficient evidence of the execution and delivery of the policy of insurance and of its loss to be submitted to the jury ; that plaintiff was not bound to disclose his special interest in the property on applica-
112 tion for insurance ; that he had offered sufficient evidence to go to the jury, of such an insurable interest in the premises, as was alleged and set forth in his declaration; and that the evidence did not disclose such misrepresentation by the plaintiff, of his interest in said premises, as would avoid the policy of insurance, if one was executed ; to which decision of the said Court, in all its parts, the defendants by their counsel excepted, and prayed that their exception might be sealed, and it is sealed accordingly.

E. B. D. Ogden.

113 The defendants, having offered their defence, called as a witness—

Elias Compton, by whom, he having been duly sworn, they proposed to prove the conduct and declaration of said Richard A. Ryerson, in reference to said fire and said insurance, for the purpose of showing that, if any policy had been issued by the defendants, the same was rendered null and void by the fraudulent conduct of said Ryerson; to which evidence the plaintiff, by his counsel, objected, and the said
114 Court declared said evidence to be incompetent and illegal, and overruled the same, upon the ground that no joint interest in such insurance was shown in said Ryerson and the plaintiff, as to make the conduct and declarations of said Ryerson competent evidence, and because said Ryerson was a competent witness for the defendants ; to which ruling and decision of the said Court the defendants prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden.

Ebenezer B. Woodruff, the plaintiff, being called and 115
sworn as a witness, by the defendants, said: I received the bonds and mortgages, and bond of indemnity mentioned in the assignment made to me by Richard A. Ryerson; I also received a bond and mortgage on the Gustin lot of two hundred and forty acres, worth $600 or $700, for six thousand and seven hundred dollars, which was intended also to cover the forge property I sold him, but did not; I conveyed the forge property to Ryerson, but the deed was never delivered to him; I have received of Mr. Depew payment of one bond and the interest, amounting to twelve hundred and forty dollars; I think I have also re- 116
ceived of him the sum of one hundred and eighty dollars, another year's interest besides; I have also received on the bonds of indemnity a little rising thirty-four hundred dollars, being the amount of the judgment on the bond; I have not received anything on the bonds of Price; I have conveyed the forge property to Space or to some one, by Ryerson's consent; I did not receive the proceeds of the sale; I don't know as I insisted on having the bond of Space now shown to me before I gave the deed; the business was done through David Thompson; I don't recollect 117
whether I delivered the deed on receiving the bond, or not; I left the deed with Mr. Thompson; I left it with him to carry out the arrangements for which that bond was given; I have received no other moneys than those I have mentioned, nor any other securities as I know of; I have Ryerson's notes for $400 or $500; he alone is the maker, and there is no endorser; one note is dated November 26th, 1853, for $130; the other is dated February 1st, 1854, for $286; I have Ryerson's order to pay these notes out of the 118
moneys I receive from the securities he assigned me; I think the order was signed when the last note was given; this suit was prosecuted at my instance; I was not requested to do so by any one else; I employed Mr. Space to assist me in getting witnesses.

Being *cross-examined* by his own counsel, he said: I took up the two mortgages held by Wade and Bronson, mentioned in Ryerson's assignment to me, and paid Wade thirteen hundred and thirty-five dollars and thirty-one

119 cents, and for the Bronson mortgage seventeen hundred and ninety-nine dollars and eighty-six cents; of the amount paid Wade, twenty-six dollars were for costs; and of the amount paid Bronson, seventeen dollars and seventy-six cents were for costs; I got judgment on the bond of indemnity for the amount I had paid for the two mortgages; I paid two hundred and eighty-six dollars and seventy-five cents for expenses of the suit on the bond of indemnity, and whether that is all the expenses or not I do not know; I never charged for anything but the actual expenses; the suit was contested all the way through, and I paid counsel
120 also for arguing the cause; I think I have paid more for the Wade and Bronson mortgage than I received on the bond of indemnity; my claim is yet something short of $4,000 more than I have received; I think it is about $3,700, without any charge for my own services; it is three thousand six hundred and fifty-three dollars and twenty-eight cents.

The amount for which Ryerson should have given me his bond and mortgage was..... $6,673 90
Int. to 14th April, 1853..... 317 92

$6,991 82
Recd. 14th April, 1853, of Depew, payment.... 1,240 00

$5,751 82
Int. to December, 1854..... 555 42
121

$6,307 24

Recd. for interest April 27th, 1854..	$180 00	
" " " Dec. 4th, 1854....	1,670 00	1,850 00
Bal. due December 4th, 1854.....		$4,457 24
Int. to 17th April, 1855.....		222 86
		$4,680 10
Recd. April 17th, 1855.....	$600 00	
Int.....	16 55	
May, recd.....	1,211 53	
Int.....	29 42	$1,857 50
Al. due.....		$2,822 60

R. A. Ryerson's note.....	$130 00	122
Int. to this time.....	13 65	
Do. to Feb. 1, 1854.....	286 75	
Int. to this time.....	26 30	
Expense account.....	357 07	
Int. to this time.....	17 00	$830 50
Now due me.....		$3,653 37

The letters shown me I received from David Thompson, in regard to the matter between me and Space, who was Ryerson's brother-in-law. The said letters, one dated May 8th, 1854, and the other May 11th, 1854, were offered and read in evidence on the part of the plaintiff *prout* the same. 123

The counsel for the plaintiff proposed and offered to examine the plaintiff as a witness generally in the cause, and to prove by him that he made the application for insurance; to which offer the defendants by their counsel objected; but the said Court decided the said evidence to be competent, and the plaintiff to be a competent witness to prove the same or any other fact involved in the said issues; to which decision and ruling of the Court the defendants by their counsel excepted, and prayed that their exception might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. s.] 124

The witness further said: I made the application for insurance to Mr. Johnson, at the depot in Morristown; I can't say how long before it was obtained; I understood Mr. Johnson to be the secretary of the company.

Question by counsel for plaintiff: What did you say to Mr. Johnson on the subject of insuring the mill?

To this question the defendants by their counsel objected, because it was not competent for plaintiff to give his own declaration in evidence in his own favor, and because if it was intended thereby to prove an application by plaintiff for insurance it was incompetent, because by the rules of

125 the company no verbal application is permitted, and because plaintiff had already offered in evidence a written application for insurance, and because also the plaintiff's declaration averred that the application was in writing and on file in the office of the defendants; but the said Court overruled the objection, and allowed the question to be answered, and declared the same to be competent and legal evidence; to which ruling and decision of the said Court the defendants excepted, and prayed that their exception might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

126 Answer: I met Mr. Johnson in a hurry, as I was stepping on board of the car, and asked him if I had any more assessments to pay. "By the by," says he, your policy has run out, referring to another policy on other property. I told him I wished him to renew it; I then told him I wanted the fulling mill property insured, and he said "I suppose you want a mortgage interest on that," and I told him I did; I did not state anything of the nature or amount of the mortgage; the next I heard of it, I received the premium note from Mr. Johnson to be executed; I signed the note here, and enclosed it in a letter to Mr. Johnson, and
127 wrote to Mr. Ryerson; that was all the conversation with Mr. Johnson; I was going to New York and he stopped here; I went to Branchville a day or two after the fire took place, and made examination as to the fire; I called on Mr. Johnson to see what it was necessary for me to do, and went from there to Branchville; he told me I had better go up and see how the fire happened and the extent of the loss, and intimated that there was some suspicion about the fire; I went and examined the situation of the mill and
128 found it most all destroyed; I found one of the men who had worked in the mill, Mr. Winans; I made my statement and affidavit of the loss from my enquiries there; the building, when I saw it, was somewhat out of order, but could not be built for less than $2,000.

Being *examined* by defendants, he said, "I received this premium note in Morristown; I signed one or two in Newton at the time spoken of by Mr. Johnson; I think I got a

policy on the forge at that time which I have surrendered; 129
I did so because I was sick of the company, I sold the property and gave up the policy because I had no further interest in it; I am not sure I did not go to Branchville and ask Ryerson if he had the policy; think I did; I think I had a letter from Ryerson before that, saying he had attended to this business; it was perhaps two or three months from the time I received the premium note till I went to Newton in April; think the note was signed at the time I received it; in April I asked Mr. Johnson about the insurance in this case.

Whitfield S. Johnson, recalled by defendants, said: I 130
went to Virginia, and on my return found that Ryerson had been there; I saw Dr. Woodruff as I was going to Virginia; I had no correspondence with him from that time till I saw him at Newton Court; I think as I stated before the premium note was signed in my office on Tuesday the first day of our April court; I came home on Saturday evening previous, and could not have got the note to the Doctor and back again between that time and the doctor's coming on Tuesday; I recollect sending two other notes to the doctor before the fire, and he brought them up when he came up after the fire; I am a little uncertain, but I think I knew 131
nothing of the doctor's having a mortgage on the property when I met him in Morristown at the depot. He owned the other property.

Being *cross-examined* he said; Richard A. Ryerson had an insurance on the property some time before; I don't know whether it was assigned to Woodruff or not; I think it expired a year before; think I left home to go to Virginia in February, stopped in Morristown on my way out; 132
think I had not heard of the insurance before leaving home; the date of survey on the 9th of March is accounted for by the fact that the application is made to the surveyor, and he brings in the survey.

The defendants offered and read in evidence the bond given to Dr. Woodruff, the plaintiff, by William Space, in the penal sum of $6000, dated May 27th, 1854, the execu-

133 tion of which had been previously proved *pro ut* the said bond.

The evidence being closed and the cause argued before the jury by the counsel, the court charged the jury as follows: "This is an action of covenant on a policy of insurance. By the theory of mutual insurance, all persons insured become corporators or partners. Their capital is mostly made up of premium notes given by the insured, and of the cash proportion of the premium. The nature of a premium note, if I correctly understand it, is that the maker of it pays interest annually on the amount of it, and if a
134 fire occurs while he continues one of the corporators, a *pro rata* assessment is made upon him to meet and discharge the loss by such fire, and so from time to time until the principal of the note is exhausted.

A leading feature in such association is, that the corporators shall exercise their discretion in the selection of persons whom they will admit to membership, and whose property they will insure as the character of the person insured may be of importance, because of the nature of the capital from which the assessed receive their indemnity.

This action is founded upon a policy of insurance issued
135 by the Sussex County Mutual Insurance Company, to Ebenezer B. Woodruff, dated March 9th 1854, wherein they covenant to indemnify the insured for five years against loss or damage by fire happening to a mill and machinery at Branchville.

The propositions of the plaintiff are, that on the 6th of September, 1854, he had an insurable interest in the mill and machinery at Branchville, of the value of $2000 at least, which interest continues to the present time.

136 That the company took the usual premium for such a risk for insuring him against fire, in the mill and machinery. That they did insure him for $2000; that they issued a policy to him as evidence of their contract; that on the 21st of April 1854, the mill and machinery were destroyed by an accidental fire; that he gave notice to the authorized agent of the company, as soon as he could, of the loss and the cause of the fire, as accurately as he could ascertain the same, and of the value of the property destroyed, and

that by the law which controls and enforces contracts of 137
that nature, the company are bound to pay him the sum of two thousand dollars, with interest to be computed from the 27th day of June, A. D. 1854, to the 6th day of November, 1855, that being the first day of the term of the Supreme Court, to which the postea of this trial will be returned.

The first question, and that which lies at the basis of the action, is, had the plaintiff an insurable interest in the mill and machinery? If he had not, your labors may close on the ascertainment of that fact—and in connection with that question does the interest continue in whole or in part to the present time? 138

Ryerson had sold to Depew and to Price certain property at Branchville. Previously to that sale he had given two mortgages upon it: one dated April 7th, 1846, to Bronson, to secure the payment of $1500, and interest, on the 1st of January, 1852; the other dated 1st June, 1847, to Wade, to secure the payment of $1000, on the 1st of June, 1848. On the 13th of December, 1848, Ryerson sold to Calvin Price that part of said mortgaged premises on which the mill was situate for $6,612, or thereabouts. By the terms of that sale Price was to relieve the whole property from the burden of the two mortgages then upon it, and also to protect Mr. Ryerson from liability on his bonds given for those mortgage debts. As he paid no cash at the time of the purchase, but in lieu thereof assumed the two mortgages, the consideration for the property was arranged by Price giving the personal security of himself. Peter Dunning, Guy Price, and Calvin Roe, in the shape of a bond, conditioned that he would pay off and discharge those mortgages when mature, and would keep down the 140
interest on the bonds from 1st April, 1849. This arrangement disposed of $2500 of the purchase money, and for the balance of $4,112 he gave his own five several bonds. 139

1	payable	April	1st,	1853, for	$500.
1	"	"	"	1854, "	1000.
1	"	"	"	1855, "	1000.
1	"	"	"	1856, "	1000.
1	"	"	"	1857, "	612.

All bearing interest, payable on the 1st of April, an-

141 nually, and secured the payment of those bonds by a mortgage upon property which he purchased from Ryerson. On or about the 15th of January, 1849, Ryerson sold and conveyed to Mr. Depew the residue of the property which had been mortgaged to Bronson & Wade, and in settlement thereof took his bonds for the payment of $4000 and interest, secured by a mortgage on the property conveyed. Price neglected to discharge those mortgages, and Ryerson was embarrassed both with his own personal liabilities, and his covenant with Depew respecting his portion of the property. He applied to Dr. Woodruff May 18th, 1852,
142 four and a half months after Bronson's mortgage became due, and more than four years after Wade's was payable. Their negotiation and agreement was on the 18th of May, 1852. Ryerson then had the five bonds of Price, and the bond of indemnity for independent portions of the purchase of the mill. The contract embraced a sale of the forge property for $3500 to be paid for out of the securities given by Ryerson to Woodruff. Woodruff's right to the purchase money was not prejudiced or lost because the title had not been made by him for the forge property, There is no pretence in the evidence that before the negotiation for insurance he had annulled the contract by re-
143 fusing to convey. No proof of any demand upon him to convey, before the application in behalf of Mr. Space, made in May, 1854. In that application Mr. Thompson, the agent of Ryerson & Space, called the forge property a part of the property of Mr. Ryerson, contracted for by Mr. Space. Woodruff stood in relation to it when he applied to the company where he did, when the agreement was made for its sale and its purchase by Ryerson. That agreement was then a subsisting one as regards that sale, and vested in Dr. Woodruff a fixed interest in the bonds
144 and mortgage given by Mr. Price, and transferred to him by Ryerson, and an insurable interest in the buildings and machinery embraced in the mortgage.

Was that interest lost or impaired by any of his subsequent acts? He paid off the mortgages to Bronson & Wade, and is nearly reimbursed, except the expenses, out of the bond of indemnity. The purchase money of the forge property was not paid. His arrangement with Space,

in May, 1854, after the fire, did not in law discharge Mr. 145
Ryerson from his indebtedness for the farm, nor relieve the securities held by Dr. Woodruff from responding to the payment. It was only additional security called for by the plaintiff, and acceded to by Ryerson & Space. He has conveyed the farm out and out without receiving any of the money, letting it be applied by Ryerson as he saw fit. As the case is before us on the documents, and the evidence connected with them, the plaintiff, by the law of the land, had an insurable interest in the mortgaged property which was consumed on the 21st of April, 1854, to the value of the insurance as claimed, which interest, in the eye of the 146
law, has not been destroyed or impaired by any of his subsequent acts.

If the plaintiff was insured by the company, did he sustain a loss? The fire took place on the 21st of April, 1854, and the building and machinery were consumed. Did he give notice, with a statement of the loss? In answer, I refer to the paper produced in evidence.

The remaining questions are: Did the company issue to him a policy? If so, was there any fraud, actual or legal, on the part of Dr. Woodruff, in obtaining the insurance, 147
which should taint and vitiate the contract, as to issuing the policy? If you believe, from the weight of the testimony, that Mr. Johnson, the acknowledged and acting agent of the company, so answered Mr. Whelpley and Dr. Woodruff, as fairly to lead them to believe that a policy had been executed and sent out of the office for Dr. Woodruff, such declaration is conclusive against the company upon the question of the execution and legal delivery of the instrument. They cannot on this trial repudiate the representations of Mr. Johnson, if made as contended for by the plaintiff. 148

No intentional fraud is pretended to have been committed. It is said there was legal or constructive fraud. The rule of evidence is well established that fraud cannot ordinarily be inferred, but it must be proved. In this case, the transaction between Dr. Woodruff and the company is fair on its face. The burden of tainting it with vitiating fraud rested on the defendants.

There is another well settled principle of law. If a

149 party contributes, by his own negligence or want of proper caution, in any essential degree to his damage, he cannot resort to the other party for redress of his injury, because a jury cannot admeasure or apportion to each the effect of his own default. The only ground on which the allegation of fraud is placed, are the withholding of notice that Ryerson had any interest in the subject matter of the insurance, and that the applicant had only a mortgage interest.

As to the first point, there is no proof which in law so connects Ryerson with the interest insured, as to make it
150 material that his name should have been mentioned.

As to the second, the interest being only a mortgage interest, such interest was insurable without notice of its nature. This part of the defence is put on the ground that the defendants have been prejudiced by the fact that the disclosure was not made. No such information is required by the conditions of the policy. No questions of the kind were asked. If material, were not the defendants in laches in not guarding that point by propounding the questions?

Is it a fact that it increased the risk? You are to judge of that. No difference is made in the printed terms,
151 whether the interest was in fee or a mortgage interest.

As to the right of subrogation, that would be to the debt and security of Price, whatever it might be. The insurers upon that doctrine would succeed to the rights which the insured may hold for indemnity from other sources. No prejudice or partiality should operate in the case. It is a simple question of right upon the construction and present efficacy of a contract, and should be settled on those principles which control the intercourse of man and man in their business relations.

152 Before the said cause was submitted to the jury by the Court, and before the jury retired to consider their verdict, the Court was requested by the defendants to charge the said jury that if, from the evidence, they believed that Richard A. Ryerson was either the agent of the plaintiff in procuring the insurance, or directly interested in the insurance, the plaintiff was bound by the acts and representations of said Ryerson in reference to the insurance; but the said Court refused so to charge, and did charge the jury that there was no evidence of such agency or interest of

said Ryerson, and the plaintiff could not be affected by 153
anything he said or did; to which refusal and charge of said Court the defendants, by their counsel, excepted and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

The defendants also before said jury retired, asked the said Court to charge the jury, that if they were satisfied from the evidence that the representations of the plaintiff, or of Ryerson as his agent, in effecting the insurance, were such as fairly to lead the defendants to suppose that the 154
plaintiff was the owner of the premises insured, and did lead them so to believe; such representation, being untrue, was fraudulent, and avoided the contract of insurance; but the said Court refused so to charge and instruct the jury, and thereupon the said defendants, by their counsel, excepted to such refusal of the said Judge and prayed a bill of exceptions, and that the same might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

The said defendants, by their counsel, also requested the 155
said Judge, before the said jury retired to consider of their verdict, to charge said jury that if they believed, from the evidence in the case, that the plaintiff refused to deliver to said Richard A. Ryerson a deed for the Forge farm until said Ryerson would give to said Woodruff further and additional security for the payment of the purchase money, then said plaintiff had no lien on the securities assigned to him by said Ryerson, or on the premises insured for the said purchase money of said Forge; which charge and in- 156
struction the said judge refused upon such request to give to said jury, and thereupon the said defendants, by their counsel, excepted to such refusal and prayed a bill of exceptions, and that the same might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

The said defendants, by their counsel, also requested the said judge, before the said jury retired to consider of their

verdict, to charge and instruct the jury that if they were satisfied by the evidence that Mr. Space, when he received the conveyance from Woodruff of the Forge farm, did so by the consent of Ryerson, and upon the agreement to stand in Ryerson's place and assume Ryerson's liabilities to Woodruff, and that Woodruff assented to it, Ryerson was in law discharged from all personal liability upon his contract with Woodruff for said Forge farm; which charge and instruction the said judge refused upon such request to give to the said jury, and thereupon the said defendants, by their counsel, excepted and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

The said defendants, by their counsel, also requested the said judge, before the said jury retired to consider of their verdict, to charge and instruct the jury that the contract of insurance in this case, if any were made, being only as security for a part, to wit, two thousand dollars of an entire debt of $6,673 90, but not of any specific part thereof, the defendants upon paying the whole debt would be entitled to be subrogated to all the rights of the plaintiff in the securities held by him for the payment of said debt, one of which was the personal obligation or liability of Richard A. Ryerson; and that if Woodruff had in any way released or discharged Ryerson from such personal liability, or any part thereof, he could not recover of the defendants in this action; which charge and instruction the said judge refused upon such request to give to said jury; and thereupon the said defendants, by their counsel, excepted and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

The said defendants also excepted to so much of the charge to said jury as instructed them that the defendants were only entitled in case of payment to be subrogated to the rights of Woodruff in the bond of Calvin Price and the mortgage on the premises insured, and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.]

The said defendants also excepted, by their counsel, to so much of the charge to the jury as instructed them that the plaintiff's rights in this action were in no way affected or impaired by his agreement to convey and actual conveyance of the Forge farm to William Space, and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly. 161

E. B. D. Ogden. [L. S.]

The defendants also, by their counsel, excepted to that part of said charge to the jury wherein the Court instructed them, that as the case was before them on the documents and the evidence connected with them, the plaintiff had by the law of the land an insurable interest in the mortgaged property, which was consumed on the 21st April, 1854, to the amount of the insurance at the time the contract of insurance was made, insisting that that was a question of fact for the consideration of the jury, under instruction from the Court as to what, in law, constituted an insurable interest, and prayed a bill of exceptions and that it might be sealed, and it is sealed accordingly. 162

E. B. D. Ogden. [L. S.] 163

The defendants, by their counsel, also excepted to so much of said charge as instructed the jury that as a matter of law the plaintiff's insurable interest in said premises had not been in law destroyed or impaired by any of his acts subsequent to effecting the insurance, but existed at the commencement of this action and at the time of the trial, insisting that that was a question of fact for the consideration of the jury, and prayed a bill of exceptions and that the same might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [L. S.] 164

The defendants also, by their counsel, excepted to so much of said charge as instructed the jury that the legal effect of the written agreement between Ryerson and Woodruff, was to entitle Woodruff to demand and recover the purchase money of the forge farm, before tendering to Ryerson a deed for the property, and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [Seal.]

165 The said defendants also, by their counsel, excepted to so much of said charge to said jury as instructed them that there was no evidence that Woodruff had annulled, or in any way impaired his rights under the original contract between himself and Ryerson, and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden. [Seal.]

The said defendants, by their counsel, also excepted to so much of said charge, as instructed the said jury that the
166 plaintiff was not bound to state in his application, that he desired to insure a mortgage interest in said premises, and prayed a bill of exceptions, and that it might be sealed, and it is sealed accordingly.

E. B. D. Ogden, [Seal.]

The said defendants also, by their counsel, excepted to so much of said charge as instructed the said jury that the defendants were estopped from denying the issuing of the policy of insurance, by the declaration of Mr. Johnson, if the jury believed the evidence of Mr. Whelpley, and prayed a bill of exceptions, and that it might be sealed, and it
167 is sealed accordingly.

E. B. D. Ogden. [Sealed.]

N. J. COURT OF ERRORS AND APPEALS.

Term 1856.

The Sussex County Mutual Insurance Company, Plaintiff in Error, *and* Ebenezer B. Woodruff, Deft. in Error.	In Error to the Supreme Court.

And afterwards, to wit, at the Term of March, in the

year of our Lord eighteen hundred and fifty-six, of the said 168
Court of Errors and Appeals, before the Judge thereof, comes the said Sussex County Mutual Insurance Company, by David Thompson, their attorney, and saith that in the record and proceedings aforesaid, and also in the matters received and contained in the said bills of exeptions sealed on the trial of the said issues joined between the parties aforesaid, and also in giving the verdict and judgment aforesaid, there is manifest error in this :

1st. That the said Justice of the Supreme Court, before whom the said issue was tried, upon the trial of the same 169
before the said jury, and after the plaintiff rested his cause, refused to nonsuit the plaintiff, although requested so to do by the counsel of the defendants, and decided among other things that there was sufficient evidence of the execution and delivery of the policy of insurance, and of its loss to be submitted to the jury; that the plaintiff was not bound to disclose his special interest in the property when applying for insurance; that the plaintiff had offered sufficient evidence of such an insurable interest in the property, as was set forth in his declaration to go to the jury; and
that the evidence did not disclose such misrepresentations 170
of his interest in the property by the plaintiff, as would in law avoid the policy of insurance, if one was executed and delivered. Whereas the said Justice ought by the law of the land to have non suited the plaintiff.

2d. And there is error also in this, that the said Justice before whom the said issue was tried upon the trial thereof, refused to allow the said defendants to give in evidence the conduct and declarations of Richard A. Ryerson, in reference to the said fire, for the purpose of showing that, if 171
any policy of insurance had been issued by the defendants, it was rendered null and void by the fraudulent conduct of said Ryerson, in whom the title to said property appeared to be, and who was proved to have been directly interested in said insurance, if any had been effected, upon the ground that said Ryerson was a competent witness for the defendants, and no such joint interest in such insurance was shown in him as would render his conduct and decla-

172 ration competent evidence; whereas, by the law of the land the defendants were entitled to give in evidence to the jury the said conduct and declaration of said Ryerson.

3d. And there is error also in this, that the said Justice, before whom the said cause was tried upon the trial thereof, against the objection of the counsel of the defendants, permitted the plaintiff, who had been called and examined as a witness by the defendants upon the question of his insurable interest in said premise, to give evidence generally
173 in his own behalf, in reference to all matters involved in said cause, whereas by the law of the land he should have been confined to those matters as to which he had been examined by the defendants.

4th. And there is error also in this, that the said Justice, before whom said cause was tried upon the trial thereof, against the objection of the counsel of the defendants, allowed the plaintiff to give his own declaration in evidence, in his own favor. Whereas, by the law of the land the said declarations were incompetent.

174 5. And there is error also in this, that the said plaintiff was allowed on the trial of said cause, against the objection of the counsel of the defendants, to give in evidence his own verbal application for insurance, whereas said evidence was incompetent, because, among other things, it appeared in evidence, that the rules of the defendants required said application to be in writing; the declaration of the plaintiff averred the same to be in writing, and the plaintiff had offered in evidence a paper purporting to be the application for said insurance.

175 6. And there is error also in this, that the said Justice, before whom the said cause was tried on the trial thereof, refused (although so requested to do by the counsel of the plaintiff, before the jury retired to consider of their verdict,) to charge and instruct the jury, that if they were satisfied from the evidence that the representations of the plaintiff, or of Richard A. Ryerson, as his agent, in effecting the insurance, were such as fairly to lead the defendants to

suppose that the plaintiff was the owner of the premises 176
insured, and did lead them so to believe—such representation being untrue, was fraudulent and avoided the contract of insurance, whereas by the law of the land the said judge was bound so to charge and instruct the said jury.

7. And there is error in this also, that the said Justice, before whom the said cause was tried on the trial thereof, refused (although requested so to do by the counsel of the defendants, before the jury retired to consider of their verdict,) to charge and instruct the said jury, that if from the 177
evidence they believed that Richard A. Ryerson was either the agent of the plaintiff in procuring the insurance, or directly interested in the insurance, the plaintiff was bound by the acts and representations of said Ryerson in reference to the insurance. Whereas by the law of the land the said judge was bound so to charge and instruct the jury.

8. And there is error also in this, that on the trial of said cause, the said justice before whom the same was tried, charged the jury that there was no evidence that Richard 178
A. Ryerson was the agent of the plaintiff in effecting the insurance, or that he had any interest therein, and that the plaintiff could not be affected by anything he had said or done. Whereas there was evidence of said agency and interest which should have been submitted to said jury, and the question of his agency determined by them.

9. And there is error also in this, that the said justice, before whom said cause was tried on the trial thereof, refused (although so requested to do by the counsel of the 179
defendant before the jury retired to consider of their verdict,) to charge and instruct the said jury, that if they believed from the evidence that the plaintiff refused to deliver to said Richard A. Ryerson a deed for the Forge farm, until said Ryerson would give to said Woodruff further and additional security for the payment of the purchase money, than he had agreed to give, then said plaintiff had

180 no lien on the securities assigned to him by said Ryerson or on the premises insured for the said purchase money of said Forge farm. Whereas by the law of the land the said judge was bound so to charge and instruct the said jury.

10. And there is error also in this, that the said Justice, before whom said cause was tried on the said trial, refused (although so requested by the counsel of the defendants, before the jury retired to consider of their verdict,) to charge and instruct the said jury, that if they believed from the evidence that William Space, when he received
181 the conveyance of the Forge farm from the plaintiff, did so by the consent of Ryerson, and upon an agreement with the plaintiff and Ryerson that he would stand in Ryerson's place and assume his liabilities to plaintiff, Ryerson was in law discharged from all personal liability, upon his contract with the plaintiff for the purchase of said Forge farm. Whereas the said justice was by the law of the land bound so to charge said jury.

11. And there is error also in this, that the said Justice, before whom said cause was tried on the trial thereof, re-
182 fused (although so requested by the counsel of the defendants, before the said jury retired to consider of their verdict,) to charge and instruct the said jury, that the contract of insurance in this case, if any were made, being only to secure a part of an alleged *debt* of $6673 90, the defendants upon paying the whole debt would be entitled to be subrogated to all the rights of the plaintiff in all the securities held by him for the payment of said debt, one of which was the personal obligation or liability of said Richard A. Ryerson; and that if the plaintiff had in any
183 way discharged said Ryerson from such personal liability, or any part thereof, he could not recover of the defendants in said action. Whereas by the law of the land the said justice was bound so to charge and instruct said jury.

12. And there is error also in this, that the said Justice, before whom said cause was tried at the trial thereof, notwithstanding the objection of the defendants, charged the

jury that the defendants, in case of payment by them, were 184
only entitled to be subrogated to the rights of the plaintiff in the bond of Calvin Price, and the mortgage on the premises insured. Whereas such is not the law of the land.

13. And there is error also in this, that the said Justice, before whom said cause was tried at the time thereof, notwithstanding the objection of the defendants at the time,) charged the said jury that the plaintiff's arrangement with Space, in May, 1854, after the fire, did not in law discharge Mr. Ryerson from his indebtedness for the farm, nor relieve the securities held by Woodruff, from responding to the 185
payment. It was only additional security called for by the plaintiff, and acceded to by Ryerson & Space. Whereas the said justice should by the law of the land have instructed the said jury what agreement in law would, or would not, have discharged said Ryerson, and left to the jury to say from the evidence whether he was so discharged.

14. And there is error in this also, that the said Justice, before whom said cause was tried on the trial thereof, and against the objection of the defendants at the time, instructed the said jury that as a matter of law the plaintiff's 186
rights were not affected or impaired by anything which had taken place between the plaintiffs, William Space and Richard A. Ryerson. Whereas, by the law of the land, the agreement between those parties was such as to release Ryerson from a part of said alleged debt, and thereby to destroy the insurable interest of said plaintiff in the property insured.

15. And there is error in this also, in that the said jus-
tice, at the time of the trial, and notwithstanding the objec- 187
tions of the defendants at the time, charged the said jury, that "as the case was before them on the documents, and the evidence connected with them, the plaintiff, by the law of the land, had an insurable interest in the mortgaged property which was consumed to the value of the insurance as claimed." Whereas, by the law of the land, the said justice should have instructed the said jury what in law constituted an insurable interest, and left to their deter-

188 mination the question whether the plaintiff had such an insurable interest in the property consumed.

16. And there is error also in this, that the said justice charged the said jury, notwithstanding the objection of the defendants, that as a matter of law the plaintiff had an insurable interest in the mortgaged property to the value of the insurance. Whereas the question of the amount of the insurable interest of the plaintiff, if any, should have been left to the determination of the jury.

189 17. And there is error also in this, that the said justice, before whom said cause was tried, at the trial thereof, and against the objection of the defendants, charged the jury that as a matter of law the plaintiff's insurable interest in said property had not been destroyed or impaired by any of the plaintiff's acts subsequent to effecting the insurance, but existed at the commencement of the action, and at the time of the trial. Whereas, by the law of the land, plaintiff had no insurable interest, and the question whether he had or not should have been left to the determination of the said jury.

190 18. And there is error in this also, that the said justice, before whom said cause was tried, at the trial thereof, notwithstanding the objection of the defendants, charged the said jury that the legal effect of the written agreement between Ryerson and Woodruff was to entitle Woodruff to demand and receive the purchase money for the Forge farm before tendering to Ryerson a deed for the property. Whereas such is not the legal construction of said agreement.

191 19. And there is error also in this, that said justice, before whom said cause was tried, at the trial thereof, against the objection of the defendants, charged the said jury that there was no evidence the plaintiff had annulled or impaired in any way his rights under the original contract with Ryerson. Whereas there was such evidence, which, by the law of the land, should have been submitted to the consideration of the jury, and have been passed upon by them.

20. And there was error also in this, that the said justice, 192
before whom said cause was tried, at the time thereof, notwithstanding the objections of the defendants, charged said jury that the plaintiff was not bound to state in his application for insurance and notify the defendants that he wished to insure a mortgage or special interest. Whereas, by the law of the land, he was bound so to state or notify the defendants thereof.

21. And there is error in this also, that the said justice, before whom said cause was tried, at the trial thereof, notwithstanding the objections of the defendants made at the time, charged the said jury who tried the cause, that if 193
they believed the evidence of Mr. Whelply, the defendants were estopped by the declaration of Mr. Johnson from denying the issuing of the policy of insurance. Whereas such is not the law of the land, and the question whether such policy was ever issued, should have been submitted to the determination of the jury under the evidence.

22. And there is error also, in that the said Court re- 194
jected legal evidence offered by the defendants on said trial, and would not permit the defendants to show at whose instance and request the survey on which said insurance was based was made, and what representations were made at the time of said application.

23. And there is error also in this, that the judgment aforesaid, by the record aforesaid, appears to have been given to the said Ebenezer B. Woodruff against the said The Sussex County Mutual Insurance Company. Whereas, by 195
the law of the land, the said judgment ought to have been given for The Sussex County Mutual Insurance Company against the said Ebenezer B. Woodruff.

And the said The Sussex County Mutual Insurance Company prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for naught, and that they may be restored to all

196 things which they have lost by occasion of such judgment, &c.

DAVID THOMPSON,
Atty. and of Counsel with Plffs. in Error.

New Jersey, ss.:

The Sussex County Mutual Insurance Company put in their place David Thompson, their attorney, to prosecute their writ of error in the Court of Errors, and appeals against Ebenezer B. Woodruff.

197 A.

Articles of Agreement made this eighteenth day of May, 1852, between Richard A. Ryerson of the county of Sussex and State of New Jersey of the one part, and Ebenezer B. Woodruff, junr. of Morristown, New Jersey of the other part, witnesseth, that the said Ryerson hereby agrees to buy of said Woodruff a certain property belonging to said Woodruff, situate near Branchville, in the township of Frankford, in the county of Sussex, known as the Forge property, wherein James Marcel now lives, containing
198 about eighty-eight acres of land more or less, and to pay for the same the sum of thirty-five hundred dollars; and the said Woodruff agrees to give the said Ryerson a good and sufficent title therefor, and the said Woodruff agrees with said Ryerson to pay off and discharge first a mortgage given by Richard A. Ryerson, dated September 7th 1846, to Frederick Bronson, trustee, &c., for the sum of one thousand five hundred dollars, payable on the first January 1852; and also another mortgage given by said
199 Richard A. Ryerson, dated 1st June 1847, to Serring Wade, for the sum of one thousand dollars, payable June 1st, 1848, both mortgages being on the same property, situate in Frankford aforesaid, part whereof was sold by said Ryerson to Joshua Depeu and part to Calvin Price. And said Ryerson hereby assigns, transfers, and sets over to said Woodruff his executors, administrators and assigns, a certain mortgage made by Joshua Depeu and wife, dated 15th of January 1849, to secure to said Ryerson the payment of the sum of four thousand dollars, which mortgage is record-

ed in Sussex county clerk's office, on 12th March, 1849 200
Book Q, page 68, &c., and the bonds therein mentioned, together with all moneys due, and to grow due thereon, and the estate thereby mortgaged, and also a certain other mortgage made by Calvin Price, and wife, to Richard A. Ryerson, dated 13th December, 1848, to secure the payment of the sum of four thousand one hundred and twelve dollars, recorded March 12th, 1849, in Sussex county clerk's office, in Book Q, page 67, together with the bonds therein mentioned, except the bond payable on the first day of April, 1854, for the sum of one thousand dollars, together with all moneys due, and to grow due thereon, and the estate thereby mort- 201
gaged, and also a certain bond of indemnity made and executed by Calvin Price, Peter Dennis, and Guy Price and Charles Roe, to said Ryerson, in the penal sum of five thousand dollars, conditioned to pay off the said Bronson mortgage, and I do hereby constitute and appoint the said Woodruff, his executors and administrators, my true and lawful attorney, in fact, to pay off the said mortgages, and to bring suit in my name, and at said Ryerson's costs and charges, to enforce the said bond of indemnity against the obligors therein named; and for fur- 202
ther securing the payment of the said purchase money of said forge property, and said money advanced to pay off the said Bronson & Wade mortgages, the said Ryerson agrees to give said Woodruff, before he pays off said Bronson & Wade mortgages, a first mortgage and lien on a tract of land situate in the township of Montague, county of Sussex, bought of Horatio N. Gustin, containing about two hundred and forty acres.

And the said Ryerson also agrees to and with said Wood- 203
ruff, his executors, administrators and assigns, to indemnify the said Woodruff, his executors and administrators, against all costs, charges and expenses, of any kind soever which he may sustain by reason of negotiating the said transaction and raising the said money to pay off said mortgages, as agent for said Ryerson; and in the prosecution of the said suits which may be brought in course of execution of this agreement, the foregoing assignment of mortgages and securities being for purpose of securing the payment of the purchase money of Forge property, and the advances

204 to be made in pursuance of this agreement, the said Woodruff to account for residue to said Ryerson, his executors and administrators, whenever collected, the said Ryerson agrees to pay interest on the said purchase money of Forge property as soon as he is in possession of the same. The said Ryerson is to keep the buildings on said mortgaged premises insured, or to indemnify said Woodruff, if he does so, and also to pay the taxes that may be assessed against the property herein mentioned, so far as the said Woodruff would otherwise be liable to pay the same.

Witness our hands and seals, the day and year first above written.

205 RICHARD A. RYERSON. [L. S.]
E. B. WOODRUFF, Jr. [L. S.]

Sealed and delivered in the presence of
E. W. WHELPLY.

B.

This policy of insurance witnesseth, that "The Sussex County Mutual Insurance Company," in consideration of deposit note No. 2513, for $180 to them paid, by the insured, hereinafter named, the receipt whereof is hereby acknowledged, do insure Ebenezer B. Woodruff against
206 loss or damage by fire to the amount of two thousand dollars on his woolen manufactory, and machinery therein, in Branchville, according to survey No. 2513, on file in this office.

And the said company do hereby promise and agree to make good unto the said insured, his executors, administrators and assigns, all such loss or damage not exceeding in amount the sum insured, as shall happen by fire, to the property above specified, during five years, to wit, from the ninth day of March, one thousand eight hundred and fifty-four (at 12 o'clock, noon) unto the ninth day of March, one thousand eight hundred and forty-nine (at 12 o'clock, noon) the said loss or damage to be estimated according to the true and actual cash value of the said property at the

time the same shall happen, and to be paid within sixty 207
days after due notice and proof thereof made by the insured, in conformity to the conditions annexed to this policy. Provided always, and it is hereby declared, that this corporation shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power. And provided further, that in case the insured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this corperation, and mentioned in or endorsed upon this policy, then this insurance shall be void 208
and of no effect. And if the said insured shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence give notice thereof to this corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect. And in case of any other insurance on the property hereby insured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage be entitled to demand or recover on this policy any greater portion of the loss or 209
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 building shall at any time after making and during the time this policy would otherwise continue in force be appropriated, applied, or used to or for the purpose of carrying on, or exercising therein any trade, business or vocation, denominated hazardous, or specified in the memorandum of special hazards, in the proposals annexed to this policy, or for 210
the purpose of either keeping or storing therein any of the articles, goods, or merchandise, in the same proposals denominated hazardous, or included in the memorandum of special rates, except as herein specially provided for, or hereafter agreed to by this corporation, in writing, to be added or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect. And it is moreover declared, that this insurance is not intended

211 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 survey above mentioned; and 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 herein otherwise specially provided for and subject to the by-laws and regulations of the company, made from time to time.

212 In witness whereof, The Sussex County Mutual Insurance Company have caused these presents to be sealed by their president, and attested by their secretary, at Newton, this ninth day of March, in the year of our Lord one thousand eight hundred and fifty-four.

JOHN HALL, President. [L. S.]

Attested,
W. S. JOHNSON, Secretary.

(Endorsed.)

No. 2513.

The Sussex County Mutual Insurance Company.

Ebenezer B. Woodruff.

Dolls. 2000.	Premium,.....	$180 00
	Deposit.....	9 00
	Policy fee.....	0 50
213	Survey.....	0 75

Apl. 6th.

Registered page 250.

Expires, 9 March, 1839.

C.

No. 2513.—Application of E. B. Woodruff, of Morristown, in the county of Morris, for insurance against loss by fire, by the Sussex County Mutual Insurance Company, to wit:—

	Estimated value.	Insurance.	Premium.
1. On Dwelling House.....			
2. Household furniture and wearing apparel therein			
3. Provisions and grain therein			
4. Barn and shed			
5. Hay and grain therein.....			
6. Wagon house.....			
7. Grain and farming utensils therein			
8. On factory and machinery.....	$3,000	$2,000	$180

Deposit 5 per cent. is $9 00

214

Note.—The Surveyor is requested to answer the following questions, viz.: (1) Situation, and by whom occupied? (2) Of what materials built, whether new or old? (3) Size of buildings and arrangements? (4) Number of chimneys, fire places and stoves? (5) Are they all secure? (6) Where are ashes kept, in wood or stone depositories? (7) Relative situation as to other buildings, distance from each, if less than 100 feet, and for what purpose used? (8) Is there any other property insured by this company within 100 feet, and to what amount?

215

Situated in Branchville, in Sussex county, occupied by Richard A. Ryerson; built of wood, except the lower story; is in good repair; 47 x 26 feet; 4 stories high; the first story is stone; is used for fulling and finishing cloth; use a stove; the pipe goes in the chimney; is secure.

Second story is used for twisting and reeling stocking yarn; use a stove in the room. 216

Third story is used for spinning and carding wool; one stove in this room; pipe goes in the chimney.

Fourth story is used for weaving; use a stove in this room also; is 100 feet from dwelling-house; 50 feet from wool-house, and within 80 feet of dye-house; the water runs through the factory and to the dye-house; no property insured within 100 feet; use oil for lights.

9th March, 1854.

S. A. Everitt.

85 c.

Survey

85 c.

(Endorsed,)

E. B. Woodruff, Jr.

No. 2513.

217 **D.**

No. 2513.

Newton, March 9, 1854.

For value received in Policy, No. 2513, dated the ninth day of March, 1854, issued by the Sussex County Mutual Insurance Company, we, or either of us, promise to pay to the order of the President and Directors of said Company, or to their successors, the sum of one hundred and eighty dollars, in such proportions, and at such time or times, as may be assessed, agreeably to the by-laws of said corporation.

RICHARD A. RYERSON.
218 E. B. WOODRUFF.

$180.

(Endorsed,)
No. 2513.
E. B. WOODRUFF.

E.

W. S. JOHNSON, Esq.,
Secretary Sussex Co. Mutual Ins. Co.

From inquiry, I learn the fulling mill of R. A. Ryerson, at Branchville, which was burned on Friday last, was somewhat out of order. Mr. R. A. Ryerson sent his men to put it in order, having built a fire to warm the house, found
219 the chimney to smoke, and thinking it foul, burned it out with some straw, as I learn about noon. In the afternoon, about six o'clock, fire was discovered about the chimney, which continued to burn until the building and machinery were consumed, excepting the wheel and a small portion of the machinery which was saved. The wheel is damaged some by fire, and by the falling of a portion of the foundation wall upon it. From what I can learn, the loss on the machinery will exceed the whole amount insured. The small portion of machinery saved is of but little value, not to exceed fifty to seventy-five dollars, and of no value

whatever to me. The insurance in your company is the 220
only one I have made on the property.

E. B. WOODRUFF.

Sworn and subscribed, this 26th day of April, 1854, before me,

THOMAS N. MCCARTER,
Master in Chancery.

F.

SUSSEX COUNTY MUTUAL INSURANCE COMPANY.

CLASSES OF HAZARDS AND RATES OF PREMIUM FOR FIVE YEARS, UPON EACH $100 INSURED.

FIRST CLASS OF HAZARDS: 221

Building of brick and stone covered with tile, slate or metal.

100 ft. from any other building.....	$0 75
75 feet and less than 100.....	0 80
50 " " 75.....	0 85
30 " " 50.....	0 90
12 " " 30.....	0 95
3 " " 12.....	1 00
Less than 3 or adjoining one side.....	1 10
" " both sides.....	1 20

SECOND CLASS OF HAZARDS: 222

Buildings of brick or stone covered with wood.

100 feet or more from other building.....	$1 25
75 feet and less than 100.....	1 30
50 " " 75.....	1 30
30 " " 50.....	1 50
12 " " 30.....	1 60
3 " " 12.....	1 70
Less than 3 or adjoining one side.....	1 80
" " both sides.....	2 00

223 THIRD CLASS OF HAZARDS:

Buildings of frame filled in with brick or stone.

100 feet or more	from	other building	.....	$2 00
75 feet and less than		100	.....	2 10
50 "	"	75	.....	2 20
30 "	"	50	.....	2 40
12 "	"	30	.....	2 60
3 "	"	12	.....	2 80
Less than 3	or	adjoining one side	.....	3 00
"	"	both sides	.....	3 50

FOURTH CLASS OF HAZARDS:

Buildings constructed entirely of wood.

100 feet or more	from	other building	.....	$2 50
75 feet and less than		100	.....	2 65
50 "	"	75	.....	2 80
30 "	"	50	.....	3 00
224 12 "	"	30	.....	3 25
3 "	"	12	.....	3 50
Less than 3	or	adjoining one side	.....	3 75
"	"	both sides	.....	4 00

NOT HAZARDOUS.—Goods not hazardous are to be insured at the same rates as the buildings in which they are contained, and are such as are usually kept in dry goods stores, including household furniture and linen, cotton in bales, bats and yarn, coffee, flour, indigo, potash, rice, sugar, teas, spices, paints ground in oil, and threshed grain; also, boots, 225 shoes, saddles, harness, leather, hides, millinery, tailors' stock, ready made clothes, &c.

HAZARDOUS.—The following trades, goods, wares and merchandise, are considered hazardous, and are charged from $\frac{1}{2}$ to 1 per cent. in addition to the premium above named for each class:—Hat manufactories, tavern-keepers, grocers, tobacco manufactories, watchmakers, blacksmith shops, bark sheds, tanneries, apothecaries, or druggists, and barns and stables detached.

EXTRA HAZARDS—Are charged from 6 to 10 per cent

Flour mills, fulling and carding mills, dyers, coopers, printing offices, cabinetmakers, chairmakers, carpenters' shops, carriage and wagon makers' shops, buildings erecting or repairing, foundries, academies, manufactories requiring the use of fire-heat. 226

Special Hazards.—Bakeries, breweries, book binderies, cotton and woollen manufactories, bark mills, coal houses, &c., may be insured at special rates of premium. Gunpowder is not insurable unless by special agreement. Hay and grain in barracks or stacks, and wagon-houses detached, are charged 2 per cent.; barns and stables in villages, and belonging to taverns, 4 to 6 per cent. Nevertheless, the Board of Directors shall have power to judge of the rate of hazards, as they may deem expedient. 227

No more than $3,000 taken on any one risk, nor more than $2,000 on any special or extra hazard.

CONDITIONS OF INSURANCE.

This Company will be liable for losses on property burnt by lightning, but not for any loss or damage by fire happening by means of an invasion, insurrection, riot, or civil commotion, or of any military or usurped power. 228

Books of accounts, written securities or evidences of debt, title deeds, writings, money or bullion, are not deemed objects of insurance.

This Company reserves the right, in all cases of loss or damage by fire, to repair or to rebuild.

Goods held in trust or on commission, are to be declared and insured as such; otherwise the policy will not cover the property. 229

Jewels, plate, medals, paintings, statuary, sculptures and curiosities, are not deemed to be included in any insurance unless specified in the policy.

Applications for insurance must be in writing, and specify the construction and materials of the building to be insured, 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

230 construction and materials; whether any manufactory is carried on within or about it; and, in case of goods and merchandise, whether or not they are of the description denominated hazardous. And if any person insuring any building or goods, shall describe the same otherwise than as they really are, so that the same be insured at less than the rate of premium specified in the printed proposals of the company, such insurance to be void and of no effect. Nevertheless the company shall be bound by surveys made by their surveyors.

Policies of insurance, made by this company, shall not be assignable, without the consent of the company, ex-
231 pressed by endorsement thereon. Notice of such assignment to be given before any loss shall have happened.

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 oath or affirmation; and also, if required by their books of account and other proper vouchers; and, until such proofs and declarations
232 are produced, the loss shall not be payable. Also, if there appear any fraud, or false swearing, the claimant shall forfeit all claim by virtue of this policy.

Notice of all previous insurance upon property insured by this company shall be given to them, and endorsed on the policy, or otherwise acknowledged by the company in writing, at or before the time of their making insurance thereon, otherwise the policy made by this company shall be of no effect. And in case of subsequent insurances on property insured by this company. notice thereof must also
233 with all reasonable diligence be given to them; in default whereof, such policy shall thenceforth cease and be of no effect. And in case of loss this company shall be liable for such rateable proportion of loss or damage happening to the insured as the amount insured by this company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.

Payment of losses shall be made in sixty days after the loss shall have been ascertained and proved; and in case difference shall arise touching any loss or damage, it may

be submitted to the judgment of arbitrators, indifferently 234
chosen, whose award in writing shall be binding on the parties.

Upon any increase of hazard on property insured, notice must be given to the company—or the policy will be void.

The company is in no case to be considered as bound until the note is accepted, the amount of fees and deposit paid, and the policy delivered over.

G.

Bond of Indemnity to Richd. A. Ryerson.

Know all men by these presents, that we, Calvin Price, of Frankford, in the County of Sussex, and Peter Dennis, Guy Price, and William Roe, of the same place, are held 235
and firmly bound unto Richard A. Ryerson, also of the same place, in the sum of five thousand dollars, current lawful money of the United States of America, to be paid to the said Richard A. Ryerson, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we do bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this thirteenth day of December, A. D. eighteen hundred and forty-eight. Whereas, the above bounden Richard A. Ryerson did, on the seventh day of December, 236
eighteen hundred and forty-six, execute a bond for the sum of one thousand five hundred dollars, the condition of the said bond, payable on the first day of January, A. D. eighteen hundred and fifty-two, to Frederick Bronson, executor and trustee to Mrs. Jane Bronson; and also a mortgage on real estate situate in Frankford, to secure the payment of the said sum of money, which said mortgage was recorded in Sussex County Clerk's office, in Book P of Mortgages, fol. 233, the interest upon which the said Richard A. Ryerson is to pay up to the first day of April next.

And whereas, also, the said Richard A. Ryerson did, on the first day of June, A. D. eighteen hundred and forty-

seven, execute a certain bond, conditioned to pay one thousand dollars, on the first day of June, eighteen hundred and forty-eight, to Serring Wade; and also a mortgage on the lands and real estate of the said Ryerson, situate in Frankford, to secure the payment of the said sum of money, which said mortgage was duly recorded in the Sussex County Clerk's office, in Book P of Mortgages, pages 384–5–6, the interest of which said bond and mortgage the said Richard A. Ryerson is to pay up to the first day of April next:

And whereas, also, the said Richard A. Ryerson hath this day sold and conveyed to the said Calvin Price a part of the real estate so encumbered by the before recited mortgages, and hath assumed to pay off and satisfy the said bonds and mortgages as a part of the consideration money to be paid for the said lands so sold to him by the said Richard A. Ryerson:

Now, the condition of this obligation is such, that if the said Calvin Price and the said Peter Dennis, Guy Price, and Charles Roe, or either of them, shall and will well and truly pay off and discharge the said bonds and mortgages, and all the interest to grow due thereon, to wit, from the said first day of April next, and fully and entirely indemnify the said Richard A. Ryerson, his heirs, executors, administrators and assigns, from the payment of the said bonds and mortgages, or any or either of them, and from all principal sums of money, and interest thereon, as aforesaid, and from all costs, damages or expenses which he may be put to for or on account of the said bonds or mortgages, or either of them, so that the said Bichard A. Ryerson, and the lands of the said Richard A. Ryerson, so mortgaged as aforesaid, be fully and entirely freed and discharged from the said bonds and mortgages, as aforesaid, then the above obligation to be void, otherwise to be and remain in full force and virtue.

CHARLES PRICE. [L. S.]
PETER DENNIS. [L. S.]
GUY PRICE. [L. S.]
CHARLES ROE. [L. S.]

Sealed and delivered in the presence of

NATHANIEL WILLIAMS.

H. 240

RICHARD A. RYERSON AND WIFE,
to
SERRING WADE.

Mortgage dated June 1, 1847, on five tracts of land situate in Frankford township, in the County of Sussex, to secure unto the mortgagee the sum of $1000, in one year, with interest, according to the condition of the bond of said Ryerson, in the penal sum of $2000.

Recorded in Book P, page 384, &c.

RICHARD A. RYERSON.
to
SERRING WADE,

Bond dated July 1, 1847, in penal sum of $2000; conditioned to pay $1000, in one year, with interest. 241

I.

RICHARD A. RYERSON AND WIFE,
to
FREDERICK BRONSON, Executor and Trustee, &c.

Mortgage on four tracts of land in Frankford, in the County of Sussex, dated September 7, 1846, to secure bond of same date, in penal sum of $4000, conditioned for the payment of $1500, on the 1st January, A. D. 1852, with interest.

Recorded in Book P of Mortgages, page 233, &c.

242 RICHARD A. RYERSON,
to
FREDERICK BRONSON, Trustee, &c.

Bond dated 7th September, 1846, in penal sum of $3000; conditioned to pay $1500 on the 1st January, 1852, with interest semi-annually.

J.

CALVIN PRICE and WIFE,
to
RICHARD A. RYERSON.

Mortgage dated December 13, 1848, on two tracts of land in Frankford township, Sussex County, conveyed to said Price by said Ryerson, by deed bearing same date
243 with the mortgage, to secure $4112, with interest, according to the condition of five several bonds or obligations made by said Price to said Ryerson.

Recorded in Book Q of Mortgages, page 67, &c.

CALVIN PRICE,
to
RICHARD A. RYERSON.

Four bonds executed by said Price to said Ryerson, all dated December 13th, 1848:

1. Penal sum of $1000 to secure $500, 1st April, 1853.
2. " 2000 " 1000, " 1855.
3. " 2000 " 1000, " 1856,
4. " 1224 " 612, " 1857.

K.

Newton, April 26, 1854.

Doct. E. B. Woodruff: 244

Dr. Sir,—The bearer, William Space, is a brother-in-law of Richard A. Ryerson, of Branchville. Richard is indebted to Space, for which he has confessed a judgment to him for about two thousand dollars. Mr. Space is a man of property, and responsible for any amount for which he would be willing to bind himself. Any arrangement which you should make with him you may depend upon having carried out strictly.

Respectfully yours,
David Thompson.

L.

Newton, May 8, 1854. 245

Dear Sir,—Richard A. Ryerson has sold out his real estate, including the Forge property, to William Space. Mr. Space informs me that he has agreed to sell the Forge property to Jacob N. V. Dimon, for $3500, and requested me to inquire of you, whether you would release your lien upon that property upon his guaranteeing that in case you did not raise the money due to you from Ryerson out of the other securities now in your hands, he would be responsible. William Space is the owner of three farms unincumbered, and must be worth, at a moderate estimate, $15,000. He will give you his own bond, and secure it by 246
a mortgage if you prefer it. Space said that your lien upon the Forge property was a mortgage from Ryerson, and requested me to draw a release, but I do not find any such mortgage on record; nor can I find any record of a conveyance from you to Ryerson in the office.

I write now to inquire whether you will release or convey to Space or his assignee, upon his securing you for all your claims against Ryerson, and if you will, in what shape

247 you would prefer that security. Your early reply will oblige Mr. Space.

Yours, truly,

DAVID THOMPSON.

E. B. WOODRUFF.

M.

Newton, May 11, 1854.

Dear Sir,—Your letter was rec'd this afternoon. I am obliged to go from home early in the morning, and shall be absent several days, and for that reason may not see Mr. Space in time to write to you before your departure. If, therefore, you will make out a deed for the Forge property to Jacob N. V. Dimon, of Frankford, or to William
248 Space, of Newton, and send the same to me, I will take care that you are fully indemnified by Mr. Space, in the manner proposed in your letter, before the deed is delivered.

I called on Mr. Johnson and inquired of him, as you requested. He says that the committee who have that matter in charge have not yet finished their investigations in relation to the burning of the fulling mill, and that the matter is not adjusted. The rule requires the company to pay within sixty days after the loss is adjusted. He says
249 that your order in favor of Mr. Whelpley will be a sufficient receipt.

Yours, truly,

DAVID THOMPSON.

E. B. WOODRUFF, Esq.

N.

Newton, July, 5, 1854.

Dear Sir,—Your letter to W. S. Johnson of the 3d inst. was handed to me by Mr. J. to be answered. The Directors of the Insurance Company wished their committee to

obtain from you some more definite information as to your 250
claim on them than is contained in your affidavit. If you will state in a letter to Mr. Johnson the mortgage under which you claim the amount of insurance, and how you hold it, I think myself it will not be necessary for you to come to Newton. If you will do this at your earliest convenience, I will endeavor to get action of the committee, and will then apprise you whether you had better come up here or whether it will not be necessary.

Yours, truly,

DAVID THOMPSON.

E. B. WOODRUFF.

O.

Know all men by these presents, that I, William Space, 251
of Newton, in the County of Sussex and State of New Jersey, am held and bound unto Ebenezer B. Woodruff, of Morristown, in the County of Morris and State of New Jersey, in the sum of six thousand dollars, current lawful money of New Jersey, to be paid to the said Ebenezer B. Woodruff, his certain attorney, executors, administrators and assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this twenty-seventh day of May, in the year eighteen hundred and fifty-four.

Whereas the above named Ebenezer B. Woodruff has 252
heretofore agreed to convey to Richard A. Ryerson, of Frankford, in the County of Sussex, a certain tract of land and forge thereon, known as the Forge lot, and containing eighty-seven $\frac{63}{100}$ acres of land, situate in Frankford, for the consideration of thirty-five hundred dollars: And whereas also the said Ebenezer B. Woodruff has heretofore paid and advanced at the request of the said Richard A. Ryerson large sums of money, exceeding in all two thousand seven hundred dollars, to secure which advance and purchase money the said Richard A. Ryerson has assigned to the said Ebenezer B. Woodruff certain bonds against Joshua Depew,

and a bond of indemnity given by Charles Roe, Guy Price and Peter Dennis to the said Richard A. Ryerson: And whereas the said Ebenezer B. Woodruff has, at the request of the said Richard A. Ryerson, this day conveyed to the said William Space the aforesaid Forge lot and tract of land and premises, by deed bearing date the 13th day of May, instant, the said William Space being a creditor of the said Richard A. Ryerson, in consideration of the said William Space undertaking and agreeing to make up to the said Ebenezer B. Woodruff for all deficiency which may arise in the securities heretofore assigned to him by the said Richard A. Ryerson, towards reimbursing the said Ebenezer B. Woodruff for all moneys advanced by him as aforesaid, and the aforesaid sum of thirty-five hundred dollars and interest from the time of said agreement so due to him for the sale of said Forge lot, and all costs, charges and expenses to which he may be subjected in and about the collection of said securities, together with a reasonable compensation for his time and trouble in attending to the same, as by his agreement with Richard A. Ryerson:

Now, therefore, if it should hereafter happen that the moneys received by the said Ebenezer Woodruff from the several securities held or received by him of the said Richard A. Ryerson, on account of the moneys advanced by him, and the purchase money aforesaid should prove insufficient to satisfy all his just claims as above mentioned and compensation as aforesaid, then and in that case, if the said William Space shall well and truly pay such sum of money as shall be necessary to make up such deficiency to said Ebenezer B. Woodruff, at the least to the amount of thirty-five hundred dollars, in case such deficiency shall amount to that sum, then this obligation to be void, else to remain in full force and virtue.

WILLIAM SPACE. [L. S.]

Sealed and delivered in the presence of

DAVID THOMPSON.