

## New-Jersey Court of Errors and Appeals.

THE BELLEVILLE MUTUAL INSURANCE  
COMPANY, AND OTHERS, *Appellants*,  
AND  
ADOLPHUS W. VAN WINKLE, *Appellee*. } *On Appeal from the Decree  
of the Chancellor.*

WM. PENNINGTON, }  
J. P. BRADLEY, } *For Appellants.*

J. WEART, }  
A. WHITEHEAD, } *For Appellee.*

### COMPLAINANT'S BILL.

*To his Honor Oliver S. Halsted, Chancellor of the State of  
New Jersey :*

Humbly complaining, sheweth unto your honor your orator, Adolphus W. Van Winkle of the township of Acquackanonk in the county of Passaic and State of New Jersey, That on or about the twelfth day of August, in the year of our Lord one thousand eight hundred and forty-eight, The Belleville Mutual Insurance Company, a body politic, and corporate, authorized, created and organized by and under an act of the Legislature of the State of New Jersey, by a certain agreement or Policy of Insurance bearing date the day and year aforesaid, in consideration of a certain deposit note, amounting to one hundred and twenty-three dollars and 10 seventy-five cents, given by your orator with one Richard Morrell as security for him, did insure your orator against loss or damage by fire, to the amount of one thousand and five hundred dollars, on your orator's looms, reeds, gears, tools, stock and fixtures of his wire cloth manufactory and contained in a building owned by Richard Morrell and John A. Post, called in said policy Morrell

and Post, situated in the Township of Acquackanonk aforesaid, and to the amount of one hundred and fifty dollars on your orator's furniture, consisting of beds, bedding, &c., bureaus, tables, chairs, &c. &c., in the house of Isaac J. Vanderbeck in the same place, as mentioned in according to a survey thereof filed in the office of said Company and numbered 1172; and the said Company by said agreement or Policy of Insurance promised and agreed to make good unto your orator, his executors, administrators and assigns, all such loss or damage not exceeding in amount the sum

10 insured, as should happen by fire to the property as above specified during five years, to wit, from the twelfth day of August, in the year of our Lord one thousand eight hundred and forty-eight, at twelve o'clock at noon, unto the twelfth day of August, in the year of our Lord one thousand eight hundred and fifty-three, at twelve o'clock at noon, the said loss or damage to be estimated according to the true and actual value of the said property at the time the same shall happen, and to be paid within ninety days after

20 due notice and proof thereof made by the insurer in conformity to the conditions annexed to the said policy provided, and it was declared by the said policy that said Company should not be liable to make good any loss or damage by fire which might happen to take place by means of invasion, insurrection, riot, or civil commotion or any military or usurped power; which said policy of Insurance was duly executed by the President and Secretary of said Company, and your orator was entitled to receive the same; and your orator called on John Kennedy, the Secretary of said Company, on several occasions for the purpose of receiving the same, but said Secretary on one pretext and another, put off the delivery thereof, and declined and neglected to deliver the same

30 to your orator, and the same has never been actually delivered to your orator, and still remains in the possession of said Company, or one of its officers, and your orator prays that your Honor will require said Company to produce the same; and your orator shews that said policy, besides the provisions and agreements before mentioned, contained divers other provisions and agreements, conditions and regulations, for which and for greater certainty in relation to the matters herein before set forth, your orator begs leave to refer to said policy of insurance, when the same shall be produced.

40 And your orator further shews unto your Honor, that on or about

the first day of January, in the year of our Lord one thousand eight hundred and forty-nine, he determined to change the location of his said wire cloth factory, from Aquackanonk aforesaid, to the township of Van Voorst, in the county of Hudson, and thereupon, on or about the day and year aforesaid, removed from Aquackanonk to said township of Van Voorst, the said looms, gears, reeds, tools, stock and fixtures of said business, insured by said Company as aforesaid, and the same were put up in two frame buildings in said Van Voorst township, situated on a street called the Railroad Avenue, and thereupon it being suggested 10 that the removal of said property avoided the said insurance, and your orator being desirous with as little delay as possible, to continue the said insurance upon the said looms, reeds, gears, tools, stock and fixtures, gave notice in writing to said Company, of the removal thereof, with a description of the buildings in which the same was located, and the situation of said buildings, with respect to surrounding buildings, and showing the character of the risk to which said property was subjected in its new location, and requested said Company to continue said insurance upon the same, upon such terms as they might agree so to do; that after some 20 delay on the part of said Company, and on or about the twelfth day of February, in the year last aforesaid, your orator received a letter from the said Secretary of said Company, informing him that the description given by him of the said property, was not sufficient to make a survey from, that he had submitted your orator's said letter and plan to the Committee, who declined taking it, and authorized said Secretary, so to inform your orator, and further stating and informing your orator, that Mr. Joralemon, (meaning Nicholas N. Joralemon, who was a director, and the surveyor of said Company,) expected to be in Jersey City, within a few days, 30 and would call and see your orator, and if the risk was such as the Company could take, that he, the said Joralemon, would attend to it. And your orator further shews, that said Joralemon did not call on him, as by the said letters to your orator it was stated he would, and your orator being solicitous about the said insurance, went again to Belleville, and was then requested by the officers of said Company, to send a diagram of the premises in which said machinery was situated with the surrounding buildings, which request your orator complied with, and caused without delay, such diagram as your orator was requested by said Company to be 40

delivered to them; and on the seventeenth of March, in the year eighteen hundred and forty-nine, your orator received a letter from the said Secretary of said Company, dated the sixteenth day of the same month, stating that the Committee of said company had agreed to take your orator's said property at three per cent. and requested your orator, if he agreed to said terms, to write to said Secretary, and that he would send to your orator, his policy at once. And your orator further shews, that he immediately wrote to said Secretary, acceding to said terms, and requested him to  
 10 forward to your orator, the said policy of insurance. and the policy note to be made for the amount of said three per cent. premium, charged for said insurance, which note your orator assured said Secretary, he would have executed at once, together with money sufficient to pay the cash premium, payable in addition to the amount which had been paid on said policy, of the twelfth of August, eighteen hundred and forty-eight, and was applicable to the new insurance agreed to be made as aforesaid, and that your orator would immediately send said note and money to him.

And your orator further shews, that said Company, instead of  
 20 continuing said insurance upon the policy first mentioned, had proposed to your orator, that a new policy should be made and issued by them for five years, as well upon said machinery, as upon said furniture, for the same amount upon said machinery and said furniture respectively, as was mentioned in said first named policy, and that upon said new policy being consummated, the said policy should be cancelled, and that upon the amount of said insurance, the premium of three per cent. per annum should be charged and paid, and secured according to the usage of said Company, which terms had been agreed upon by your orator  
 30 and said Company, before the receipt of said last mentioned letter from their Secretary, provided said Company concluded to continue the insurance on said machinery.

And your orator further sheweth unto your Honor, that the said Secretary paid no attention to said last mentioned letters, that after waiting for an answer to the same until the thirteenth day of the same month of April, eighteen hundred and forty-nine, your orator went to the office of the said Company, at Belleville, and there saw the said John Kennedy, their said Secretary, and inquired of him whether he had received from your orator, his  
 40 letter aforesaid, that the said Secretary denied that he had received

the same, that your orator then stated to him the contents as above mentioned; and your orator further shews, it was thereupon distinctly agreed between your orator and the said Secretary, in behalf of said Company, that said policy of insurance should be immediately issued upon the terms before mentioned, and your orator urged the immediate execution of the same, to the end that he might be at once insured upon said property, and tendered himself ready immediately to execute and deliver the deposit note required by the Company, with the proper security satisfactory to said Company, but the said Secretary stated that 10 some time was required to make out and have executed said policy and prepare said deposit note, and thereupon the said Secretary promised your orator that he would immediately prepare and have the policy executed, and inclose the same, with the deposit note to be executed by your orator, and his surety, by mail, directed to your orator at Jersey City, your orator promising to have said note executed at once, and return the same to said Secretary with the portion of premium payable at that time; that your orator being anxious to be insured at once, and apprehensive of delay, stated to the said Secretary that he desired that his said property 20 should be insured from that day, and that unless he could effect an arrangement with said Company, by which said Company would be bound, and your orator would be insured from that day, he would immediately proceed to the city of New York and obtain an insurance upon said machinery, in some office in said city, and the said Secretary thereupon distinctly agreed that said insurance and insurance policy should take effect from that time, and assured your orator that he might consider said property to be included in said policy as insured from that date; and your orator relying upon and confiding in said agreement made by said 30 Secretary, for and in behalf of said Company, desisted from immediately insuring said property with any other Company as he should, and would have done, if said agreement and representation had not been made as aforesaid.

And your orator further shews unto your Honor, that the said Secretary of said Company, notwithstanding his said promise to cause said policy to be prepared and executed immediately, and inclose the same, together with said note, to your orator, as aforesaid, paid no attention thereto, until the eighteenth day of April aforesaid, when it appears he prepared said policy and had it 40

executed, and on the twentieth of said month he wrote to your orator, enclosing the deposit note, dated on said eighteenth day of April, but did not mail the said letter until the next day after the date thereof, that said note was drawn for the sum of two hundred and forty-seven dollars and fifty cents, being three per cent. per annum, for five years, upon said sum of sixteen hundred and fifty dollars, the amount of said insurance; that said policy of insurance was not enclosed by said Secretary, according to his said promise, and his letter enclosing said note, in consequence of  
 10 the unnecessary delay of said Secretary, and the delay of the mails, and the intervening of a Sunday, was not received until the twenty-fourth of April aforesaid.

And your orator further shews unto your Honor, that in the night of the twenty-second day of April aforesaid, in which said machinery was situated at Van Voorst, as aforesaid, were destroyed accidentally by fire, and the said looms, reeds, gears, tools, stock and fixtures were in part destroyed by fire, and in part partially destroyed by said fire, and otherwise injured and damaged by said fire; and your orator not having then received said policy or  
 20 said deposit note, called on said John Kennedy, the said Secretary at Belleville the next day after said fire, and inquired of him whether he had sent the same, agreeable to his promise, and was informed by him that he had; but upon a further question put to him by your orator, he said he had not sent the policy, but that the same was at the office, ready for your orator at any time, duly signed and attested, and in recognition and confirmation of the agreement before mentioned, the said John Kennedy then declared that your orator then was, and had been since said thirteenth of April, insured upon said property by said Company, to all  
 30 intents and purposes.

And your orator further shews unto your Honor, in further confirmation of the said agreement of said Company, and of their liability to your orator, for his loss by the destruction and injury of the said machinery and stock, that on the said twenty-third of April, he had a conversation with Nicholas N. Joralemon, Esq., who was then a director of said Company, and their surveyor, touching said insurance and the liability of said Company, and having explained to said Joralemon, the true state of the case between your orator and said Company, and said Joralemon well  
 40 understanding the same he declared to your orator, and admitted

that the said Company were liable upon said insurance, and that if said property should burn, or had been before then and after said thirteenth of April, destroyed by fire, they were or would be bound to pay to your orator, the loss or damage.

And your orator further shews unto your Honor, that forthwith after sustaining said loss and damage, he gave notice thereof, in writing to said Company, agreeably to the conditions annexed to the policies used and issued by said Company, and to the two policies herein particularly mentioned, and that as soon thereafter as possible, to wit, on the ninth day of May, in the year of our 10 Lord one thousand eight hundred and forty-nine, he delivered to said Company, a particular account of his loss and damage, signed by his own hand and verified by his oath, taken before David Bedford, Esq., a Justice of the Peace in and for the said County of Hudson, on the eighth day of May aforesaid, together with the declaration of your orator, under oath, made before said Justice, that no other insurance had been made on said property, except a policy of insurance issued by the Mutual Insurance Company of the City of Albany for one thousand dollars; that the amount of the loss so verified was two thousand three hundred and seventy- 20 seven dollars and eighty-eight cents, which your orator now further shews and states, was a true account of his said loss.

And your orator further shews that the said loss and the amount thereof, were further verified by the affidavits of William Gillreth, Thomas Fanning, and Joseph Wine, taken before said Justice on said eighth day of May, and annexed to said account, and delivered therewith to said Company; and that your orator also procured a certificate under the hand of said David Bedford, as such Justice of the Peace for the County of Hudson, as aforesaid, he being most contiguous to the two story frame building which was 30 partially consumed, and of the one story frame building in the rear of said two story frame building, which was entirely consumed on the night of said twenty-second day of April, and not concerned in the loss; that he was acquainted with the character and circumstances of your orator; that he had examined and investigated the circumstances attending the fire, and the loss and damage of your orator by reason of the destruction of his stock, finished and unfinished, machinery, tools and fixtures, and injury done to the same by said fire, as set forth in the aforesaid statement and affidavit of your orator; and that he, the said Justice, 40

did verily believe that your orator had really, and by misfortune, and without fraud or evil practice, sustained by such fire loss and damage on said stock, finished and unfinished, tools and fixtures, in said buildings contained at the time of the burning thereof, to the amount of two thousand three hundred and seventy-seven dollars and eighty-eight cents, which certificate of said David Bedford, Esq., bears date the said eighth day of May, and was annexed to said account made by your orator of his said loss and damages, and delivered therewith to said Company, which said  
 10 statement, account and affidavits and certificate, were in conformity to, and in compliance with the eighth condition annexed to the two policies of insurance, before mentioned; which, together with said policies of insurance, are now in the possession of said Company, and which your orator prays they may be required to produce, and to which, when produced, your orator, for greater certainty begs leave to refer.

And your orator further shews unto your Honor that the aforesaid deposit note, inclosed to him as aforesaid by the said John Kennedy, the said Secretary, being for the sum of two hundred  
 20 and forty-seven dollars and fifty cents, and dated on said eighteenth day of April aforesaid, and received by your orator on the twenty-fourth of said month, as aforesaid, was thereupon immediately executed by your orator, together with Richard Morrell, a person of wealth and unquestionable pecuniary responsibility, residing in the County of Passaic aforesaid, as his surety, and was, without any delay, to wit, on the twenty-sixth day of April aforesaid, offered and tendered to the said John Kennedy, Secretary as aforesaid, and also to John Williams, Esq., then President of said Company; your orator also at the same time offered to pay to  
 30 the said John Kennedy, and to the said John Williams, the sum of seven dollars and twenty cents, being the amount of the cash payment to be made on said policy and note, and for the fees of said policy, after deducting six dollars and eighteen cents, which said Company then had in their hands, paid on the policy first mentioned, and which was applicable to said new insurance; and your orator requested said John Kennedy and John Williams, severally and respectively to receive said note and money, and to deliver to your orator said policy of insurance secondly herein before mentioned.

40 And your orator further shews that before the said Belleville

Mutual Insurance Company agreed as aforesaid to insure said looms, reeds, gears, tools and stock and fixtures, your orator gave notice to them that he had before insured the same for one thousand dollars in the Mutual Insurance Company of the City of Albany, and that the policy of such insurance was then in force.

And your orator further shews unto your Honor, that he became a member of said Company on the said twelfth day of August, eighteen hundred and forty-eight; that the aforesaid policy of insurance of that date was regularly made and issued by said Company, upon your orator's making said deposit note of that date, 10 for the sum of one hundred and twenty-three dollars and seventy-five cents, and giving the security on the same before named, and the delivery thereof to the Company, and paying five per cent. upon the amount thereof, in cash; that your orator has never ceased to be a member of said Company; that the said policy has never been cancelled with the knowledge or consent of your orator, nor could the same have ever been lawfully cancelled by reason of any thing which has transpired, unless the said Company became bound by the said policy, secondly above mentioned, and liable to your orator thereon. 20

And your orator further shews unto your Honor, that he is advised by his counsel, that by reason of the premises, the said Belleville Mutual Insurance Company became and is liable to pay to your orator the said sum of fifteen hundred dollars, insured by them in your orator's said looms, gears, reeds, tools, stock and fixtures, so destroyed and damaged as aforesaid, or so much thereof as will be sufficient to pay and make good your orator's said loss and damage as aforesaid, after deducting from the amount of said loss and damage the sum of nine hundred and fifty-one dollars and fifteen cents, paid to your orator by the said Mutual Insurance 30 Company of the City of Albany, as their share and proportion of said loss and damage.

And your orator further shews, that he has frequently, by himself and his agent, and in a friendly manner applied to the said Company, and requested them to pay to your orator their just proportion of the said amount insured on said property, and which they ought to pay towards making good the said loss and damage; and your orator well hoped that the said Company would have complied with such reasonable request, as in equity and good conscience they were bound to do; but now so it is may it please 40

your Honor that the said The Belleville Mutual Insurance Company, combining and confederating to and with the said John Kennedy, who now is, and at the time of the transactions in this bill named, was Secretary of said Company, and said Nicholas N. Jorolemon, who now is, and was at the times aforesaid, one of the directors of said Company, and to and with divers other persons at present unknown to your orator (but whose names, when discovered, he prays may be inserted herein, and they made parties hereto, with proper and apt words, to charge them), unjustly refuse to pay to your orator, their just proportion of the said insurance money of fifteen hundred dollars, so insured on your orator's said property destroyed and damaged as aforesaid, and by way of justification, or excuse of themselves, the said confederates sometimes give out and pretend that although it may be true that the said Company did agree to insure your orator's said property after the same was removed, as your orator has herein before stated, in the manner as your orator has before set forth, yet, that seeing that the said policy of insurance was not delivered to your orator, and your orator had not delivered previous to said loss and damage, the premium note required to be given as the consideration for said Company's agreeing to make such insurance, they are not bound to pay the same, whereas, your orator is advised by his counsel, and respectfully insists that the said Company are nevertheless bound to pay your orator's said loss and damage, to the amount of fifteen hundred dollars, or so much thereof, as will together with the sum paid to your orator by said Mutual Insurance Company, of the city of Albany, make good to your orator, his loss and damage aforesaid. That by the negligence and unnecessary delays of the said Company and their Secretary, the delivery of said policy was unnecessarily and wrongfully delayed beyond the time when said fire happened; that your orator being always ready and willing to deliver said note, and pay said money, he ought not to be prejudiced by the tardiness and negligence of said Company or their officers, and the more especially does your orator insist that the said Company is liable to pay said sum of money towards said loss and damage, because they agreed with your orator that said insurance should take effect at and from the said thirteenth day of April aforesaid, and thereby induced your orator to effect said insurance with said Company, and prevented him from obtaining insurance on his said property in some other

Company, which he otherwise could and would have done before the happening of said fire, and your orator submits to allow said Company, so as to excuse themselves from paying your orator, would be to permit them to practise a flagrant wrong and fraud upon him. And at other times the said Company pretend that by law, and their usual course of business, the deposit note with five per cent. on the amount thereof, is required to be paid before the issuing of any policy, or policies of insurance; whereas your orator is advised, and insists that the contrary thereof is true, and that said Company have frequently made contracts of insurance, and executed and issued their policies of insurance before the deposit notes were delivered to them, or any money paid on account of the same, and that they have frequently agreed and bound themselves for any losses which might be sustained of the insured property by fire, between the time when the agreement was made for such insurance, and the time when the policy and note could be prepared and delivered, and the usual percentage paid on the amount of the deposit note. And your orator avers that such was the usual course of business, to a great extent, of said Company, and that your orator had good right to rely with confidence upon the agreement and representations made with and to him as aforesaid. 10

And your orator further charges and insists and submits to this Court, that the said Company, by the agreement made by them with your orator as aforesaid, that his said property should be insured from said thirteenth day of April, as aforesaid, waives the right to require said deposit note to be delivered to them, and five per cent. thereon, to be paid before they became bound for any loss, and that they were, and are bound according to the agreement by them made, as aforesaid; and again the said Company pretend, that as a new negotiation was opened between your orator and them, touching the continuance of said insurance originally made by them, on your orator's property, as aforesaid, or for a new insurance thereof, and that such negotiation having failed to be completely carried into effect, (which your orator by no means admits,) that the said Company is relieved from all liability whatever to your orator, on account of the loss and damage aforesaid, whereas your orator says, that if by reason of the said deposit note not being delivered to said Company, and the per cent. payable paid, and the second named policy delivered to your orator, the 30 40

said Company is not liable under said agreement and policy, then your orator insists and submits to this Court, that the said Company is liable to your orator, to make good his loss and damage aforesaid, to the amount of fifteen hundred dollars, or so much thereof, as with said sum paid to your orator by said Mutual Insurance Company, of the city of Albany, will make good your orator's said loss and damage upon said policy of insurance first herein before mentioned, and which remains in full force, not in any wise cancelled or made void as herein before mentioned; that your  
 10 orator's property injured and destroyed by said fire, as aforesaid, was the same as was covered and insured in and by said policy, and that the removal thereof, under the circumstances, did not in any wise relieve said Company from their obligations arising upon that policy, and the said confederates make divers other frivolous, unjust and fraudulent pretences to endeavor to avoid the payment of the said fifteen hundred dollars, or so much thereof as might be necessary to make good your orator's loss and damage aforesaid, and to defraud him of<sup>th</sup> the same; all which actings and doings, and pretences of said Belleville Mutual Insurance Company, and  
 20 John Kennedy and Nicholas N. Joralemon, and their confederates, are unjust and inequitable, and tend to the manifest wrong, injury and oppression of your orator. In tender consideration whereof and forasmuch as your orator has no safe and adequate remedy in the premises, by the strict rules of the common law, or can obtain a discovery in relation to the facts, matters and things herein before mentioned, except by the aid of a Court of Equity, where matters of this sort are properly cognizable, and the parties relievable.

To the end therefore that the said The Belleville Mutual Insurance Company may according to law and the practice of this  
 30 Court, and that the said John Kennedy and Nicholas N. Joralemon may upon their several and respective oaths, according to the best of their respective knowledge, information and belief, true, full, and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated and they thereto particularly interrogated paragraph by paragraph, and that a just and true account may be taken, under the direction of this Honorable Court, of the amount of your orator's loss and damage sustained by him by the destruction and  
 40 injury by fire of his said machinery, stock, and fixtures before

mentioned, and insured by said Belleville Mutual Insurance Company as aforesaid; and that upon such account being taken, it may be decreed that the said The Belleville Mutual Insurance Company shall pay to your orator the said sum of fifteen hundred dollars, or so much thereof as may be sufficient to make good to your orator his said loss and damage as aforesaid, and that the said Company may also be decreed to pay to your orator all his costs and charges in this behalf sustained, and that your orator may have such other or such further relief as may be just and equitable, and your Honor shall see fit and proper to grant. 10

May it please your Honor, the premises considered, to grant unto your orator the writ of Subpœna of the State of New Jersey, to be directed to the said The Belleville Mutual Insurance Company, John Kennedy and Nicholas N. Joralemon, and their confederates when discovered, therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises, and to abide by, stand to and perform such decree to be made herein as to your Honor shall seem just 20 and proper, and shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

## DEFENDANTS' ANSWER.

The joint and several answer of THE BELLEVILLE MUTUAL INSURANCE COMPANY, JOHN KENNEDY and NICHOLAS N. JORALEMON, Defendants, to the Bill of Complaint of ADOLPHUS W. VAN WINKLE, Complainant.

These defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit and exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof, as these defendants are advised is material for them to make answer unto, they answer and say, that they deny that the defendants, The Belleville Mutual Insurance Company, on the twelfth day of August, in the year of our Lord one thousand eight hundred and forty-eight, or at any other time, 10 insured the complainant against loss or damage by fire, on his looms, reeds, gears, tools, stock and fixtures of his wire cloth manufactory, contained in a building of Morrell & Post, at Acquackanonk, or in any other building, or on the furniture belonging to the complainant, as stated in the bill. And these defendants allege the truth of the transaction to be, that being a company duly incorporated by an act of the Legislature of this State, by the aforesaid name of The Belleville Mutual Insurance Company, for the purpose of insuring against loss or damage by fire, which is fully admitted by these defendants. The complainant through 20 his friend and agent, Cornelius G. Van Riper, Esq., applied to the said Company for an insurance on the property above stated, for the sum of one thousand six hundred and fifty dollars. The survey was made by the said Cornelius G. Van Riper, and was with a note for the deposit money, handed to John Kennedy, one of these defendants, then, and still Secretary of the Company, who made out at the time of the transaction, a policy of insurance on the said property, of the date, term and purport of that sta-

ted in the complainant's bill, which he, the said Secretary signed himself, and then took it to the president of the Company, John Williams, Esq., who also signed it, but refused to deliver the policy or to issue it until he could consult Nicholas N. Joralemon, one of these defendants, who was a director and a member of the Executive Committee of the said Company. That the President, after consulting with the said Nicholas N. Joralemon, and considering the application, refused to take the said risk, and declined giving the policy aforesaid, and so informed the Secretary. That the complainant called upon the Secretary shortly after, for his policy, 10 when he was informed that the President would not take the risk, and was advised by the Secretary, to call and see the President on the subject, but he refused to do so, saying no, he would not, for he was insured already. And these defendants further answering, say that the said policy was never entered on their books, and not even in the memorandum book. That the said note, called the deposit note, is now, and has always been held by the Secretary, subject to the order of the complainant, and was at all times ready to be delivered to him if he would receive the same. And by inspecting the said note, it will be seen that the same was 20 imperfectly made, and blanks left for the number of the policy and its date, and was designed only to take effect in the event of the said policy being issued, and which as the same was not issued, was never binding on any of the parties to the same, nor did the complainant ever pay any money on account of the said policy or the said note. And this defendant, The Belleville Mutual Insurance Company, has now in their possession, the said deposit note, survey, and policy with the name of the President torn off, in their possession, which has never been out of their possession, or beyond their control, and which they are ready to produce, as this Court 30 shall direct, and to which, for the contents thereof, when produced they may leave to refer.

And these defendants further answering, say that they believe it to be true, that at or about the time stated in the bill, the complainant removed his wire cloth factory, from Acquackanonk, to the township of Von Voorst, in the county of Hudson, and removed there his looms, reeds, gears, tools, stock and fixtures, and they admit that he gave notice of such removal, in the shape of an application, to have the policy before stated transferred upon the property in its new location, as if the same was a valid and sub- 40

sisting policy. But these defendants always declared that no such policy existed, or had ever been issued, and refused to treat with the complainant, on any such idea as a transfer of the said alleged policy. And these defendants admit that the Executive Committee did agree to take a new policy upon the said property, and upon the said household furniture, at three per cent. premium, upon the same amounts stated in the first policy and in the same proportions, provided the terms and conditions required by the charter were complied with by the complainant, as is required  
10 upon every new application. And in pursuance of such determination a survey was made by this defendant, Nicholas N. Joralemon, the surveyor of the company, and which bears date the eighteenth day of April, A. D. 1849, and the complainant was informed by the Secretary of the determination of the Company, to grant him such new policy upon the terms aforesaid. And these defendants say that nothing further was heard by them from the complainant respecting the said policy until the Secretary met him in Paterson and asked him if he had made out his policy, when the Secretary told him he had not, because he had  
20 not heard from him. The complainant then told the Secretary to make out the policy which was done by the Secretary, after getting from the surveyor the particulars thereof. That the Secretary of the Company mailed the deposit note to the complainant, at Jersey City, stating to him, that when he returned the note and fees, the policy would be sent him, and these defendants say, that the said note and fees were not returned to the said Company, or any of its officers, until after the fire occurred in which the property was destroyed, nor was the said policy ever issued by the company, but the same and the said survey, are still  
30 in the possession of these defendants, ready to be produced as this Court shall direct, and which they pray leave to refer to, for the contents thereof. And these defendants say, they cannot state the precise dates of these transactions, but they occurred at or about the date, for this purpose referred to in the bill. And these defendants say, that after the said fire, and not before, the complainant called on the Secretary of the company, and tendered to him, the deposit note and the fees, which he refused to receive, or in any way to bind the Company for the said loss. And these defendants state, that although an assessment was made for losses  
40 sustained by the Company, on the deposit notes, during the time

the said deposit note of the complainant's on the said first policy remained in their hands, yet no assessment was made on the said note, nor was it treated as belonging in any sense to the Company.

And the said John Kennedy, one of the defendants, answering for himself, saith that he was at the time of the transactions herein referred to, and still is, the Secretary of the Company, and he denies that he ever agreed that the said policy should take effect, or that the property of the complainant should be considered as insured from the time stated by complainant, in his bill, or from 10 any other time than that of its execution and delivery, and that he never was authorized by the said Company to enter into any such stipulation. And these defendants, jointly answering, deny that any such power was ever vested in the Secretary or any other officer or person connected with the Company, and as they are advised could not be legally, to declare any policy valid before the terms of the charter of the Company should be complied with, and they deny that any such stipulation or agreement was made by the said Company, or by their authority, to the complainant, as is alleged in the bill. And these defendants further answering, 20 admit that the notice of the complainant of the change of location of his goods from Acquackanonk to Van Voorst Township was in writing, and that the Secretary wrote to the complainant by letter of the twelfth of February, 1849, as set forth in the bill, but as these defendants have retained no copy of said letter they pray leave to refer to the contents thereof when produced. And these defendants admit that the complainant sent to the Company a diagram of the premises in which the property proposed to be insured was located, and the letter of the seventeenth of March, A. D. 1849, of the Secretary, if the same states (which 30 these defendants do not suppose) that the policy would be made out and sent before the preliminaries required by the charter were complied with by giving a note, or in any other respect, it was unauthorized and not binding on the said Company. And the said defendants admit that the complainant did call at the office of the Company and said he would have the note executed and the fees paid, but they cannot state for they have no knowledge of the state of the mails when the letter of the Secretary was received by the complainant, but they know the same was not offered to the Company before the fire occurred, nor was there 40

any understanding, express or implied, on the part of the Company that the complainant should be insured until he received his policy and gave his deposit note and paid his fees in pursuance of the charter of the Company.

And these defendants further answering, pray leave to refer to the act of the Legislature of the State of New Jersey, under which the said Company was chartered, entitled "An act to incorporate The Belleville Mutual Insurance Company," passed March 4th, 1839, and to every provision thereof and to the by-laws of  
10 the Company for the contents thereof and for the terms upon which alone the Company made insurances or were authorized to make them. That by their charter the Company was created upon a principle of mutuality, by which all the insured became interested in every insurance that was had and in the strict observance of the law. And by the sixth section of the said act, it was provided that every person who should become a member of said corporation by effecting insurances therein should, before he received his policy, deposit his promissory note for such a sum of money as should  
20 be determined by the directors, and that a part, not exceeding five per cent. of said note, should be immediately paid, and the remainder of said deposit note should be payable in part or the whole, at any time when the directors should deem the same requisite for the payment of losses by fire and such incidental expenses as should be necessary for transacting the business of said Company. And by the eighth section of the said act, it is further provided that every member of said Company shall be bound to pay for losses and such necessary expenses accruing in  
30 and to said Company, in proportion to the amount of his deposit note or notes, and all buildings insured by said Company, together with the right, title and interest of the assured to the lands on which they stand, shall be pledged to the said Company, and the said Company should have a lien thereon in the nature of a mortgage, to the amount of his deposit note, which should continue during his policy and commence whenever the said Company should file with and have entered in the book of mortgages kept by the clerk of the county where the property is situate, a memorandum of the name of the individual insured, a description of the property, the amount of the deposit note or notes and the term for which said policy should continue. And by the ninth section  
40 of the said act, it was further provided that suits at law or in equity

might be maintained by said corporation against any of its members for the collection of said deposit notes, or any assessment thereon or for any other cause relating to the business of said corporation. And it was provided in and by the said act, in the first section thereof, that the Company might make and establish such by-laws and regulations as to them might seem necessary and expedient for the well ordering and government of said institution, and put the same into execution. And these defendants state that under that authority the said Company did make and establish a number of by-laws, which were made public and published 10 in a pamphlet with a copy of the charter of the Company and distributed freely among those interested in the said Company or proposing to take out policies therein, and which they believe were fully known by the complainant or might certainly on enquiry by him have been known to him. And that by the third article of said by-laws, it was declared that there should be an Executive Committee, to consist of the President and four other persons, to be elected in each year from the Board of Directors. And by the ninth article it was further provided that all applications for insurance must be made in writing, describing the buildings and pro- 20 perty, where situated, of what materials built, dimensions, relative situation and distance as to other buildings, for what purpose occupied, also the estimated value of the buildings and property on which insurance is wanted. And by the tenth article, it was further provided that every person wishing to become a member of the said Company should previous to being insured, deposit his application and premium note and per cent. with the Secretary of said Company, and if approved by the Company the policy shall bear date on that day and take effect at noon, unless directed by the applicant to be dated on a future day. 30

And these defendants further answering, say they are advised by counsel, and therefore insist, that by the act of incorporation of the said Company, and the operation of its by-laws, no policy could be issued until a deposit note had been given and approved by the Board, and the per cent. thereon paid, and that if a policy was issued without these prerequisites, the company could not be bound for any loss by fire that might happen. That it is the business of a person applying for insurance, to see to it, that he obtains such policy in due form, and that until he obtains it, he had no right to suppose he is insured. And these defendants fully believe 40

that the complainant knew the regulations of the said Company, and the general laws of insurance well enough, not to think himself insured by the said Company, at the time his property was burnt, that he is now efforting to enforce payment of the Company as an experiment.

And these defendants admit that the deposit note for the amount stated in the bill was on the day therein also stated enclosed complainant, but he paid no attention to it until after the fire, although he had plenty of time to do so. That the letter was  
10 mailed on the twentieth of April and the distance to Jersey City is only ten miles, so that our letter in all probability reached there that day, and the fire did not occur until the twenty-second day of the same month.

And these defendants further answering, say that they have understood and believe and therefore admit that the complainant's property was destroyed by fire at the time stated in the bill, but how it occurred they have no knowledge, and the complainant, conscious that no insurance had been effected by him with the Company, these defendants admit, did in a cunning way come  
20 early the next morning and without mentioning any thing of the fire, endeavored by various conversation to entrap the Secretary and Surveyor of the Company into some act or declaration by which, under the circumstances existing in the case, he might lay some claim or color of claim, for an insurance having previously thereto been effected, but the defendants aver that such a course by concealing the knowledge of the fire having occurred, is a fraud upon the Company, and that any declaration of the Secretary or Surveyor, if any was made (which is denied), that the complainant was then insured or had been from a day previous thereto, was  
30 unauthorized by the Company, and could in no respect be binding on them. And the said Nicholas N. Joralemon answering for himself, saith that he had a conversation with the complainant at the time stated by him, the same having been introduced in a covert way without stating that a fire had occurred, and that in such conversation he may have admitted, though he does not recollect with any accuracy what was said, that upon the completion of the note and receiving his policy it would take effect from the time of his application, but he is quite certain he never did say or have intended to say that if a fire intervened after an  
40 application made for insurance and before a policy issued or the

deposit note given, the Company could in any sense be bound. And that whatever conversation may have taken place, it was without any authority from the Company and casual in its character.

And these defendants admit that on the thirtieth of April succeeding the fire the Secretary of the Company received a notice in writing from the complainant of the fire post marked New York on the twenty-fifth of the same month, and that subsequently, but at what particular time these defendants do not remember, the complainant also sent to the Company a particular account of his loss and damages signed by him and verified before a Justice 10 of the Peace of the county of Hudson, with the declaration that no other insurance had been made on said property except a policy for one thousand dollars at Albany, and that he therein stated the amount of his loss to be as set forth in the bill or thereabouts. But as these defendants have that paper in their possession they pray leave to refer to the same for the contents thereof as occasion may require. And the defendants also admit that there was appended to the said papers the further affidavits of William Gilliette, Thomas Fanning, and Joseph Wine and the certificate of Joseph Bedford, a Justice of the Peace, as set forth in the 20 bill.

And these defendants further admit that on the application for insurance, the complainant informed the Company that he had an insurance on the same property for one thousand dollars in the Mutual Insurance Company of Albany, then in force. And these defendants deny that the complainant ever was a member of the said The Belleville Mutual Insurance Company, nor is he such member at this time under virtue of said policy as these defendants are advised and fully believe. And they admit that the complainant has requested payment for his loss, which these 30 defendants have refused upon the ground that he had no just or legal claim upon them for the said money. That his policy was never taken out and that it was his own neglect that he was not insured before the fire.

And the said John Kennedy answering for himself, admits he was during all this transaction and is now the Secretary of the Company, and that in that character he wrote letters to the complainant, but he has no copies of them and cannot state their dates or contents with accuracy, but prays they may be produced by the complainant and read in this cause, to ascertain if necessary 40

their object and purport. And the said Nicholas N. Joralemon answering for himself, admits that he was at the time aforesaid and is now a director of the said Company and a member of the Executive Committee. And these defendants deny that there was any unusual delay in making out the policy in this case and in attending to the business, or that there was any fraud designed or committed in the whole matter. And these defendants are advised by counsel and submit to the Court that the complainant has no right to file his bill in this Court, and that there is no matter of  
10 equity upon which he can come into this Court, and they pray the same advantage thereof as if the same had been pleaded.

And these defendants deny all unlawful combination and confederacy in said bill charged without that, that any other matter or thing material for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their  
20 reasonable costs and charges, in this behalf most wrongfully sustained.

## COMPLAINANTS' PROOFS.

Examination of witnesses in the above cause, on the part of the above named complainant, pursuant to notice, due service whereof was admitted by the counsel of the defendants, at my office, in the city of Newark, New Jersey, on the thirteenth day of April, 1855, at ten o'clock in the forenoon. Present Jacob Weart and Asa Whitehead, Esqs., for complainant, and William Pennington, Esq., for defendant.

*John A. Snyder*, of full age, a witness produced on the part of the complainant, being duly sworn according to law, doth depose and say : I reside in Newark, New Jersey ; I am acquainted with the complainant in this cause, also with John Kennedy, the Secretary of The Belleville Mutual Insurance Company ; I am also acquainted with Nicholas N. Joralemon, one of the defendants in this cause ; Mr. Joralemon was a director of The Belleville Mutual Insurance Company and also a surveyor of the Company ; he was such director and surveyor in 1849 ; I went with the complainant to the office of the Company in the month of April, 1849 ; I can't tell the date of the month ; I can't tell precisely, but it was some eight or ten days previous to the burning of the factory ; can't tell how many days exactly ; some few days before Mr. Van Winkle went there to see about his policy of insurance on his factory at Jersey City ; he carried on the wire cloth business in this factory ; he went there, as I understood, to get insurance on his stock and implements in the building ; he said " my stock ; " we found Mr. Kennedy by the door of the office ; we did not go in the office ; Mr. Van Winkle asked Mr. Kennedy if he had received his letter, (the letter must have been in relation to the insurance from the conversation afterwards) and Mr. Kennedy said he had not received it ; Mr. Van Winkle stated that he accepted the terms of the Company, and Kennedy said he had not received the letter, and then Mr. Van Winkle said that he wished he would

go on and make out the policy right away, and Mr. Kennedy said he would do so ; and Mr. Van Winkle then offered to give him the balance of the money ; it seemed there was to be a note given for part of the premium, but Mr. Kennedy said it did not make any matter, he would make it out and send it to him, and he might hand him the money at any time ; and then Mr. Van Winkle asked him if he was insured, and Mr. Kennedy said " yes, most assuredly ;" and as we were driving off Mr. Van Winkle turned round and said he wished he would make it as soon as he could,  
10 and he said he would make it out right away ; we then left him ; Mr. Kennedy said he would forward the policy to him right away, or forthwith, or some such way as that ; I supposed it was to be sent by mail ; mail was not mentioned ; when Mr. Van Winkle offered to pay him the balance of the premium, the cash balance, Mr. Kennedy said the papers were mixed up, he did not know how much it would come to until he calculated it up, and he could hand it to him at any other time, it would make no difference ; Mr. Van Winkle asked him if he was insured from that time, and he said " yes, most assuredly." The morning after the fire  
20 occurred of Mr. Van Winkle's stock and factory at Jersey City, I was present at a conversation between the complainant and Nicholas N. Joralemon, who was then a director and surveyor of the Company ; Mr. Van Winkle's questions to Mr. Joralemon, when they met, were to this effect : he began to cite if such a thing should happen as a fire, and a man should not have his policy, but should be told by the Secretary that he was insured after having made application. He said whatever the Secretary should say the Company would be liable for, and he for one  
30 would vote that the man should have his pay ; I am not positive then whether Mr. Van Winkle told him right away whether the fire had happened, but Mr. Joralemon said that the Company would be liable for what the Secretary said ; after this they talked awhile, and then Mr. Van Winkle told him that the fire had happened, and that he had made application to Mr. Kennedy for his policy and that Mr. Kennedy had n't sent it ; Mr. Joralemon then said, that if the Secretary told you you was insured, you was, undoubtedly ; he spoke this before Mr. Van Winkle told him that the fire had occurred, and afterwards too, and more plain even than that, for he said, what is the use of having an agent to tell  
40 a man that he is insured, and he also said that the Company could

not get out of it ; this conversation with Mr. Joralemon occurred at the Mansion House at Belleville, and the next morning, about eleven o'clock, after the fire occurred ; Mr. Van Winkle spoke in this way : he laughed and said, people did n't get their policy four or five months after they were due, and Mr. Joralemon said it was too much the case. *I have had business often with this Company, and know their manner of doing business—it is very careless ; they have that reputation all through the country ;* [objected by the defendant's counsel.] During the conversation between Mr. Kennedy and Mr. Van Winkle I understood this was a continuance of 10 old insurance ; there was nothing of this said, except that Mr. Kennedy said, that the premium would come to more than the old one, but how much more he could not tell ; there was nothing said about any transfer. [The counsel of the defendants objects to any evidence as to the conversation between the complainant and Nicholas N. Joralemon.]

*And being cross-examined* by the counsel of the defendant, he says : I kept the Public House at Acquackanonk at that time ; I had no interest in this business whatever ; the way I came to go with Mr. Van Winkle was, that I was going to Newark, and 20 gave him an invitation to go with me ; this was the first time I went and saw Mr. Kennedy ; when I asked Mr. Van Winkle to go with me at first he hesitated, and then said he would go with me, as he wanted to go and get his policy, and could get to Jersey City as early that way as to wait for the Paterson cars. I suppose we were talking with Kennedy some ten or twelve minutes ; don't know exactly the minutes ; we did n't get out of the wagon we were in, neither of us ; I don't know whether this insurance was on the buildings ; Mr. Van Winkle said " my stock ;" he said he wanted his stock insured ; nothing was said about this stock 30 having been previously insured, only that Mr. Kennedy said that the premium would come to more money ; no note was given then ; Mr. Van Winkle said he would pay him the money and make out the note. I think, come to think of it, that Mr. Van Winkle said, when he offered to pay him this money, that when he sent him the policy he would send him the note ; yes, that was the way of it. I don't know the amount of the insurance, nor any thing about the rate ; they mentioned about the rate, but I don't remember what it was ; Mr. Van Winkle told him that he had written about the rate, and had accepted the terms. The way I happened to 40

go with Mr. Van Winkle when he went to see Mr. Joralemon, was this : Mr. Van Winkle came to my brother's stable to get a horse, and I happened to be there with a horse and wagon going up, and told him he had better save expense and go with me. Mr. Van Winkle told my brother and me that there had been a fire, and he wanted to go up and notify the Company. He told us this at the stable before we started. I guess we were there talking with Mr. Joralemon from a half to three-quarters of an hour—about half an hour. Mr. Van Winkle did not then enquire for Mr. Ken-  
 10 nedy, as I know of ; did n't go to the office of the Company, as I know of ; all the conversation I heard at that time was in the bar-room at the tavern ; Mr. Van Winkle had talked with Mr. Joralemon and put the suppositious case, before he told him about the fire.

*And being re-examined in chief:*—When Mr. Van Winkle offered to pay the money, and to return him the premium note, when Mr. Kennedy sent him the policy, Mr. Kennedy said it was all right.

Sworn and subscribed before me, at }  
 20 Newark, April 30th, 1855. } JOHN A. SNYDER.  
 JOHN WHITEHEAD, M. C. C. }

The examination was here adjourned by consent of the parties, until Friday, the fourth day of May next, at ten o'clock.

FRIDAY, May 4th, 1855. Parties met as before and pursuant to adjournment. Present Jacob Weart and Asa Whitehead, Esqs., for complainant, and William Pennington, Esq., for defendant, and the examination on the part of the complainant was proceeded with.

*Cornelius G. Van Riper*, of full age, being produced as a witness  
 30 on the part of complainant, being duly sworn according to law, doth depose and say : I reside at Acquackanonk, Passaic county, New Jersey. I have been one of the directors of The Belleville Insurance Company for some time ; I was such director in 1848, and before that, I think ; I had the privilege of taking surveys in my neighborhood ; when there was no surveyor it was resolved by the Company that I and some others should have that privilege ; my general practice was to take the surveys and send them in to the Company, and they returned me the policy with the note, upon which I received the money and gave up the policy ; this was my  
 40 most general practice ; the note was signed, money paid, and I

delivered the applicant the policy; there were cases in which people were anxious to pay in their premium and gave their note upon taking the survey, which was occasionally done—which was not so often, but once in a while done; the survey was then sent by itself, and the money and the note afterwards given to the Company, and the policy sent back to me, and when I received the policy I delivered it to the applicant.

*Question.* Did the Company recognize that manner of doing business and as a general thing act up to it?

They generally did, but sometimes the Executive Committee 10 would reject the whole survey, and sometimes in part—that is, reduce the amount of the risk. I do not recollect any instance where the Company rejected the risk when I had received the cash and the premium note. I know Adolphus W. Van Winkle, the complainant. He resided at Acquackanonk, and carried on the wire cloth business when I took a survey for the purpose of an insurance on his property; I took a survey on his property for the purpose of effecting an insurance in The Belleville Insurance Company; the property taken under the survey principally were looms and machinery for carrying on the wire weaving business; 20 the items I could not tell, not being acquainted with them; I don't remember any household furniture; my impression is that the whole amount to be insured was on the machinery, and that the amount was fifteen hundred dollars. It appears to me now that there was an additional amount for household furniture; the policy would shew—the survey at any rate would; after the survey was made I received from Mr. Van Winkle the money, and the premium note too, I think; they both go together. It is not likely that I sent the money and note with the survey; I sent the survey by mail, or in some way or other, and held the money until I set- 30 tled with the Secretary of the Company, which might be one, two or four weeks after I received the money, when I settled for all the money and notes in my possession; sometimes it was eight weeks or more before I settled with the Secretary. Parties might have their policies and I still have their money; I suppose I have now money and notes on hand, that has been in my hands some two months and better; my general practice is to notice in pencil below the survey, that I have received the note and the amount of premium I have received, whether one, or one and a quarter, or a half per cent., so that the Committee could decide whether I 40

have been right or wrong. The amount in cash I received from Mr. Van Winkle was something like seven dollars, and that I suppose was five per cent. on the premium note; that, I think, was our practice at that time. Mr. Van Winkle must have signed the note as principal, and I think Richard Morrell must have signed the note as security; Mr. Morrell is a responsible man. It was not common that there was some delay, after I received the money and the premium note, in sending the policy; it happened sometimes, but they generally came in due time; what I mean by due  
 10 time is, that the policies would come in two, three or four days; it has happened sometimes when a survey that I have sent down had been mislaid or miscarried, and I sent down a new survey. I don't remember of any cases where a month or two elapsed after I sent down the survey before a policy was returned; I don't think as long as a month elapsed; I did not get Mr. Van Winkle's policy or receive it; I made enquiry and understood that Mr. Van Winkle had been there making enquiry for it himself, and then I stopped supposing that he would attend to it himself. I think I have went as far as this, to say to parties that they probably might  
 20 consider themselves insured, but could not say positively so until the survey was approved; that was my usual expression. I have told some that they might consider themselves insured without making the reserve; this was not the most common. In case where I received the money and the premium note I have refused occasionally to take the money and the note, when I had doubts of the survey being approved. The Company have retained the money of Mr. Van Winkle so far as I know; I think it is probable that Mr. Van Winkle asked me to get his policy when I received his money and note, and I promised to get it; I almost always  
 30 tell parties that I will get their policies. I know the hand-writing of John Kennedy; a paper purporting to be a letter, dated March sixteenth, 1849, from John Kennedy, being shewn to the witness, he says that paper, the whole of it, is undoubtedly in Mr. Kennedy's hand-writing. John Kennedy always has been Secretary of the Company, I believe, and was at that time such Secretary. [The defendant's counsel, The Belleville Insurance Company, in pursuance of a notice from the solicitor of complainant, has produced two papers purporting to be policies of insurance, issued by The Belleville Mutual Insurance Company, and numbered 1172,  
 40 and the other 1312, and being offered in evidence by the com-

plainants, as was also the paper above referred to, they are marked severally Exhibits W. No. 1, 2 and 3, on the part of the complainant.]

*And being cross-examined* by counsel of the defendant, the witness says : I am now a director of the Company and have been such director since 1848. There are thirteen directors ; John Williams was President in 1848, and from the commencement of the Company until about 1850. The Company had a surveyor appointed in 1848 ; he was Nicholas N. Joralemon ; he has been a director from the commencement ; I think he was out one year, 10 but what year I do not recollect. In 1848 I was not the general surveyor of the Company, nor have I ever been the general surveyor of the Company ; each director, when there was no surveyor in the neighborhood, had the privilege of taking surveys and returning them to the Company ; this is all the power I had in taking surveys ; the same power that I had appertained to every director unless in the village of Belleville, where there was a regular surveyor. The Company never delegated to me the power to complete insurance ; the executive committee were appointed for the purpose of acting in the surveys. Whenever I told applicants 20 they might consider themselves insured it was based on my confidence that the executive committee would approve my doings ; some part of the time I was a member of the executive committee ; five was the number of this committee ; a majority should pass. The executive committee have rejected and altered my surveys. I don't remember that I told Mr. Van Winkle any thing more particular as to his being insured than others, at the time he paid me the money and gave me the note.

*Q.* Do you not know that the Company refused the policy of Mr. Van Winkle ? 30

I can only say in reply, that I heard that Mr. Van Winkle called for the policy, and I heard, I think, from one of the Company, that Mr. Williams, the President, had doubts about signing the policy, and this is only out-door talk ; what came of the policy I don't know ; I can't tell who were the executive committee, or whether I was one of it or not, that year ; I don't recollect any action before the executive committee at any time when I was a member of it, relative to this policy of Mr. Van Winkle ; I do not know, of my own knowledge, what became of this money and note of Mr. Van Winkle, after I gave them to the Secretary. I can't 40

tell the date of the survey I made. Mr. Van Winkle, I think, never called on me for his policy ; I don't think I ever told Mr. Van Winkle he was insured. I have told parties, after the policy was in my hands and before it was delivered, that they were insured.

*And being re-examined in chief:* It might have been after the fire that I heard that Mr. Williams had doubts about signing the policy, and it might have been before ; my impression was that Mr. Van Winkle had his policy, but I did not know any thing  
10 about it.

Sworn and subscribed before me, at }  
Newark, N. J., May 4th, 1855. } CORNELIUS G. VAN RIPER.  
J. NO, WHITEHEAD, M. C. C. }

*Adrian Van Blarcom*, of full age, produced as a witness on the part of the complainant, being duly sworn, says : I reside at Acquackanonk, Passaic county, New Jersey. I know the complainant in this cause ; he had formerly a wire factory at Acquackanonk ; I can't tell positive at what time he removed his factory to Jersey City. Four or five years ago I knew Cornelius G. Van  
20 Riper ; I have done business with him as surveyor and agent of The Belleville Insurance Company ; the business was to have my buildings insured, at two or three different times ; whether he took the first survey or not I am not certain, or whether Mr. Joralemon took that survey ; but he took the last two, I am certain ; I paid the premium money and gave the premium note to Mr. Van Riper ; he received them from me for the Company ; I suppose so ; he received on account of the survey ; he undertook to get the policies for me. I always understood it by Mr. Van Riper, that I was insured when I paid my money and gave my note ; certainly so ;  
30 I don't know as I have paid Mr. Van Riper any money except when I got the policy. It was delayed sometimes for a month or so, and when I would ask Mr. Van Riper where my policy was, he would say there was some delay about it, and I would say I did not want to be assessed if I was not insured, and he would say, there would be no difficulty, and it would be all right. I considered myself insured, and Mr. Van Riper represented this so to me ; this was before I got my policy.

*Q.* State whether after Mr. Van Riper made surveys, and before the policy had been procured, that you was insured notwithstanding the policy had not been received ?  
40

Yes, sir : that is so ; that would be some time after I had proposed to be insured ; some time after I had made application to be insured.

*And being cross-examined :* When Mr. Van Riper told me that I was insured, I did not know whether he had my policy in his hands or not, nor whether the Company had acted on my case or not. I do not recollect of any case where I paid my money and gave the note until I got the policy ; I gave the note and paid the money at the same time. I considered myself insured before I gave the note and paid the money. I don't recollect that Mr. 10  
Van Riper told me that I should not be assessed until I got my policy ; he might have told me so, but I don't recollect. This last time but one, this spring, that I was insured, Mr. Van Riper had the policy for two or three weeks before I got it ; he told me so. I live about three-quarters of a mile from Mr. Van Riper's ; he and I are intimate and friendly ; always been friends ; he has been in the habit of doing a great deal of business for me ; I have had great confidence in him, and do have yet.

*And being re-examined in chief :* The witness says, upon the occasions I have mentioned, when Mr. Van Riper mentioned that 20  
there was some delay about the policies, I understood from Mr. Van Riper that he had not yet received the policy, but whether the committee had acted on them or not, or whether the delay was the Company's, or mine, or not, I cannot say.

Sworn and subscribed before me, at }  
Newark, N. J., May 4th, 1855. } ADRIAN VAN BLARCOM.  
JNO. WHITEHEAD, M. C. C. }

*John A. Van Riper*, a witness produced on the part of the complainant, being duly sworn according to law, deposes and says : I reside in New York city ; I resided there in April, 1849 ; I for- 30  
merly resided in Belleville, in the township of Belleville ; I was born and brought up there ; I am fifty years old and upwards, and am now a clerk. I know the complainant and John Kennedy ; I was present at an interview between Mr. Van Winkle, the complainant, and Mr. Kennedy, in the month of April, 1849, at Belleville ; I can't tell the date exactly, but it was the day after Mr. Van Winkle's wire cloth factory was burnt at Jersey City ; I think it was on Monday ; I heard a conversation which took place between them at that time ; Mr. Van Winkle asked Mr. Kennedy why it was that he had not sent his papers of insurance ; Mr. 40

Kennedy said that he had sent them, that he had sent them last week, and that they must be in the post-office if he had n't received them ; Mr. Van Winkle told him that he had been there several times, or sent for them, and had n't got them, and did n't feel safe in leaving his property in the condition it was. Mr. Kennedy told him that the property was insured to all intents and purposes, the same as though he had all the papers ; he considered it so himself ; and then Mr. Van Winkle told him that his place had burned down the night before, or the day before, and I don't know that Mr. Kennedy made any reply to that, and I don't know that Mr. Van Winkle said any thing more, for about that time we separated. I did n't understand what the papers were to which reference was made, by the papers of insurance ; I supposed from the conversation, that they meant the policy of insurance. After Mr. Van Winkle told him that his place had been burned, I don't think that Mr. Kennedy made any reply at all. When we parted I think Mr. Van Winkle and I turned our way, and Mr. Kennedy went his way. I know that Mr. Kennedy's manner of doing business is what I should say careless ; I mean careless as Secretary of the Company, in insurance matters. My father's name is Abraham Van Riper, of Belleville ; he has been, as I have understood, a director of the Company ; I have understood him to say that he was President for two or three years past, and I don't know but longer.

*And being cross-examined—Question.* Can you say whether Mr. Kennedy, in the conversation referred to, said he had written a letter to Mr. Van Winkle, or had sent him his policy ?

I can't say that he said that he had written him a letter, or that he had sent him his policy, but he said he had sent him his papers of insurance ; what those papers were I can't say, but I supposed from the conversation that it was his policy of insurance, or else that conversation would not have come up about his being insured, that he considered him insured.

*Q.* Can you state the language used on that occasion ?

No, sir ; not the precise words, I cannot.

*Q.* How came you to be there ?

I was at the Mansion House, and Mr. Van Winkle came there and asked me to go and shew him where Mr. Kennedy lived, or go with him to Mr. Kennedy's.

Q. Did he state to you before you saw Kennedy that the fire had taken place?

Yes, sir.

Q. What conversation had you and Van Winkle before seeing Kennedy that day?

Mr. Van Winkle told me that his place had been burned down, and that he had not received his papers, which Mr. Kennedy had promised to send him, and he wanted to go and see Mr. Kennedy to know why he had not sent them.

Q. Did he not state to you that he did not want him to know of the fire?

No, sir.

Q. Did Van Winkle state to Kennedy about the fire until after asking Kennedy why he had not sent the papers?

No, sir; not to my knowledge.

Q. How long was you there?

From five to fifteen minutes, probably.

Q. Was any body present at the conversation but you and Van Winkle and Kennedy?

No, sir.

20

Q. Where was it?

It was between Mr. Kennedy's house and the Mansion House.

Q. Can you state any transaction of Mr. Kennedy's shewing his carelessness in the business of the Company?

Well, perhaps what I call careless others would not; I have frequently been in the office of Mr. Kennedy & Cadmus, who were in the lumber business, and have seen policies and other papers of the Company scattered about where persons had free access, and no one there but myself.

Q. Did you know any thing about the papers referred to except that they were policies.

No, sir; there were a number of papers and policies then laying around, that I saw.

*And being re-examined in chief:* I don't now recollect distinctly that Mr. Van Winkle told me in the conversation between us, before going to see Kennedy, that Kennedy had told him he was insured; we met Mr. Kennedy when we were on the way to his house. The office where I saw these policies and papers scattered about was Kennedy and Cadmus' office; they were partners in the lumber business; the firm was H. K. Cadmus & Co.; there 40

has been a sign up at the same place like this : “ Belleville Mutual Insurance Company ;” there was none there ; the office is situated on the dock at Belleville, attached to their lumber yard ; on this occasion, when I saw the papers about, I saw the books of the Company lying about, too ; the Company had an iron safe there in an adjoining office, adjoining room, as I understood, to keep the papers and books in for the Company.

*And being re-cross-examined—Question.* Was not this the place where the business of the Company was usually transacted ?

10 Yes, sir ; this was the office of the Company.

Q. Was not this office on the main street in Belleville ?

Yes, sir.

*And being re-examined :* There were two rooms on the same floor, in the same building ; the iron safe was kept in a side room from the office of H. K. Cadmus & Co.

Sworn and subscribed before me, at

Newark, N. J., May 4th, 1855.

JNO. WHITEHEAD, M, C. C. }

JNO. A. VAN RIPER.

THURSDAY, August 2d, 1855. The parties met as before, pursuant to notice, due service whereof is acknowledged by the  
20 counsel of defendants. Present, Jacob Weart, Esq., solicitor, and Asa Whitehead, Esq., of counsel with the complainant, and William Pennington, Esq., counsel with the defendants.

*Thomas W. Satterthwaite*, a witness produced on the part of the complainant, being duly sworn according to law, saith : I reside in the township of Belleville, Essex county, New Jersey. I am fifty-eight years of age, and my business is an adjuster of averages in the city of New York ; I am also engaged in carrying on farming at Belleville township. I have been familiar with the business  
30 of insurance since 1811 ; at that time I was clerk at the agency at New York, of the Phoenix Insurance Company, of London, England ; I am the agent now of the North American Insurance Company, of Philadelphia. In marine insurance, with which I am familiar, the Company is bound from the moment that the parties come to an agreement to the terms of insurance, without the actual payment of premium or issuing of policy ; where notes are given for the premium, this is the case also, even though the notes are not received ; this is frequently the case, where the notes are not received until thirty days after the issuing of the policy and  
40 delivery of it to the party insured ; this is the custom of the

Company for which I am agent, as above mentioned. I have been insured in The Belleville Mutual Insurance Company; in cases of all the policies I have taken out of that Company, at different times, the risk attached from the date of the survey or report, and I have been informed by the officers of the Company, with whom I transacted the business, that the payment of the premium or the giving of the notes, was not necessary at the time to bind the Company; I think I have taken four, five or six policies for myself and others, out of this Company; the first policy was taken out five or six years ago, perhaps seven; the last policy I 10 took out for myself was applied for, I think, in March, 1854; the premium paid and note given late in May; I considered it at least six weeks between application for and receipt of policy; when I applied for the insurance the Company granted it, and the policy when delivered was antedated; the policy was delivered to me at the time I gave the notes and paid the premium; I applied for the policy several times between the application for the policy and the receipt of it, and made complaints that I did not receive it; when I applied for the policy, answer was made that Mr. Ken- 20 nedy had n't made out the policy, or that he had it; don't remem- ber that it was said to me at this time; it was told to me that I need not give myself any uneasiness, that the Company was bound; that had been said so often to me on former occasions, that I suppose it was not thought necessary to repeat it; in the other policies I took out of this Company there was always a delay in the issuing of the policies; sometimes more, sometimes less; sometimes several weeks, I should think; I always paid the premium and gave the notes when the policies were issued and delivered to me; I have been informed that the Company was bound from the time the insurance was granted, both by Mr. Ken- 30 nedy, the Secretary, and Nicholas N. Joralemon, the surveyor; it was to this effect: you need n't give yourself any uneasiness, the Company is bound from the time the survey is made. As far as my observation would justify me in forming an opinion, it has struck me that the affairs of the Company are conducted in a very loose manner. In March last, 1855, a fire occurred upon my premises at Belleville; the property was insured in The Belleville Mutual Insurance Company; a doubt having been expressed, whether I had not vitiated my policy by erecting a steam boiler on my premises, I applied to the Company for the original appli- 40 cation and survey, made out by myself; this could not be found;

I had taken the precaution of having copies of this said application, and on being applied to by the Company, I exhibited to them my policies with the said copy attached, upon which this boiler was shewn; the original survey was then found, and Mr. Kennedy informed me it was found in the hands of Col. Mott, who, I understood, was an agent of the Company, not residing in Belleville. Mr. Henry K. Cadmus applied to me on behalf of the Company for my original policies; I think I asked Mr. Cadmus why they wanted the policies, and he said it was customary for  
 10 them to have the policies; I left them with him upon the understanding that he was to be personally liable to me for their return; this was immediately after the accident, at my first interview with them after the fire. For the last year or two, Mr. Cadmus is the only person I have had any thing to do with, in transacting business with for the Company; he acted as a sort of substitute for Mr. Kennedy. I know of no custom of Insurance Companies calling for the delivery of policies to the Company after a loss, before a settlement. From my knowledge of the business of Insurance Companies it is not necessary, if their books are correctly  
 20 kept, for them to have the policy to adjust a loss; their books would shew all that was necessary. I afterward applied for the policies to Mr. Kennedy, and some little demur was made about returning them to me; I told him that they had been merely lent to Mr. Cadmus, and insisted upon having them; he referred to Mr. George W. Perry, in whose possession they proved to be, and after some little difficulty or demur on his part, they were returned to me, but the copies of the original survey, attached to the policy, were not returned with the policies. I came into this county in  
 30 1844, and I think it was in 1847 or 1848 that I took out my first policy in this Company; all the policies that I took out of this Company were antedated back to the time of granting the insurance, without respect to the time of paying the premium or the giving of the notes. The officers of the Company always told me that the Company was bound from the time they made the survey and agreed to take the risk, without reference to the payment of premium, or the giving of notes; these officers who told me this were Mr. Kennedy, the Secretary, and Nicholas N. Jorammon, the surveyor.

Sworn and subscribed before me, at  
 40 Newark, N. J., August 5th, 1855. } T. W. SATTERTHWAITE.  
 JNO. WHITEHEAD, M. C. C. }

Adjourned by consent, for the cross-examination of Mr. Satterthwaite, until August 7, 1855.

AUGUST 7th, 1855. Parties met, present as before, and the cross-examination of Mr. Satterthwaite was continued, by consent, before Henry J. Mills, one of the Masters in this Court.

*Cross-examined*: I reside on the farm once belonging to Captain James Morris; I purchased that farm for my mother-in-law; it cost \$22,000; I have lived on that place continually since I came into the county; the farm is less than three miles from the bridge at Belleville; 'tis on the Passaic river, about two miles from the upper part of Belleville; I saw the officers of the Belleville Insurance Company very often; there were no fires except the one I mentioned, under the policies I held of that Company; at the time that fire occurred I had given my notes, paid the premium and received my policies and all was completed. Mr. Nicholas Joralemon was the surveyor; Mr. Kennedy, as Secretary, and Nicholas Joralemon, as the surveyor, were the only parties conducting the business of the Company that I knew at the time; when they told about the policies, previous to the last one, being good before the notes were given or policies taken out, one of them, Mr. Kennedy, was in the office, or in a room where a sign was up, the only place I know of as an office. In respect to Mr. Joralemon, I don't think I ever spoke to him on this subject in the office of the Company, that I remember; he usually does his business either in his house or his store; the policies, when I received them, were signed by the President and Secretary of the Company. The Company of which I am agent is a Marine Insurance Company, and when I speak of the custom of companies, I wish to be understood as speaking of marine insurance companies; in these companies in cases of doubtful responsibilities, they would not insure without getting the money; would not take the risk; if the payment of the premiums was made good, and the risk made secure, the policy would be granted. I am not paid by the Belleville Insurance Company in full; have been paid a part and have a promise to pay from them; don't know that there is any dispute about the claim; I don't know of this Company settling a claim where the policy was not issued; don't know any thing about the business of the Company.

Sworn and subscribed before me, this  
seventh day of August, A. D., 1855.

HENRY J. MILLS,

Master & Ex. in C., N. J.

T. W. SATTERTHWAITE. 40

*Richard Parkes*, a witness produced on the part of the complainant, being duly sworn according to law, doth depose and say : I reside at Belleville, New Jersey, and am an engraver by trade. I have had business with the Belleville Mutual Insurance Company ; I have had four policies in that Company ; I think the custom of the Company was to deliver the policies after they had agreed to take the risk ; I think the second policy I took in the Company was not delivered until six months after they agreed to take the risk ; I called several times at the office for the policy, and Mr. Kennedy was not there ; Mr. Cadmus told me either that 10 Mr. Kennedy had n't made out the policy, or that he was not in, and either Mr. Kennedy or Mr. Joralemon told me, when I took the policy, that I was perfectly safe—that the Company was bound from the time the Company made the survey. Nicholas N. Joralemon made the surveys, to the best of my recollection ; I paid the premium when I got my policies and gave the notes ; I have no doubt as to this ; the policies when delivered were dated back to the time of the survey ; at the time I got my policy I complained to them about the delay, and told them I was uneasy, and in reply 20 they told me not to be uneasy, I was perfectly safe, because Mr. Joralemon had taken the survey, and I was insured from the time of the survey. My impressien is that it is as much as twelve years ago since my first policy was taken out of this Company ; from the representations made to me by the officers of the Company I always understood, from the time the first policy was issued to me, that I was insured from the time the survey was made.

*And being cross-examined* by Gov. Pennington, the witness says : No fire occurred in any of the risks taken upon policies issued by the Company ; no test was given in my cases whether 30 the Company was liable or not ; I had no occasion even to make any claim against the Company ; I never had the printed terms of the Company except what was in the printed part of the policy ; the Company finally gave me a printed form and policy in each case ; one of my cases was an original application and the others were renewals ; in my first application for policy I think I was delayed six months ; my first policy was procured through my own agent ; as to that, I can't tell any thing about whether there was delay or not ; I do not know how long it was after my agent applied for insurance that the note was given ; I do not 40 know the circumstances at all under which the policy was obtained

by my agent in the first place ; I can't tell whether he had got the policy or not, at the time he wrote me word that he had got my premises insured, which he did write me. My agent's name was Andrew Arthur ; he is dead ; I lived at the time at or near Hudson, in New York ; the policy I got was upon my own property, not obtained by former owner ; I obtained the other policies myself, except the first. Before the time Mr. Joralemon or Mr. Kennedy told me that I was insured, I had given my note ; I gave my note at the time Mr. Joralemon made the survey ; I never had occasion to ask the Secretary or Mr. Joralemon whether I was 10 insured or not ; it was when I asked them for my policy that they told me I was insured, and I had then given them my note ; I suppose so, at least ; I conformed with the rules when I was insured in this Company ; I always paid money ; I never gave any note only the premium note ; I don't understand exactly the effect of that note.

*Q.* Did Mr. Kennedy or Mr. Joralemon ever tell you that you was insured before you paid the money for the insurance and gave your premium note ?

What I mean to say is, that they told me that I was insured 20 before I got my policy, and that means from the time of the survey. They never did tell me I was insured until I had paid the money and given the premium note ; I gave them the premium note before I got my policy.

*Q.* Did you not pay the money and give your premium note in these cases when you made application to be insured ?

No, sir, I did not ; now, when I come to recollect, I did not pay any money until I got my policy ; the last time, I remember, I paid the money and gave the premium note when I got the policy at Kennedy's house. 30

*Q.* Had the Company issued the policy before they had the note ?

I paid the money and gave the premium note and got my policy too, at the same time, at Kennedy's house ; I have dealt with Henry K. Cadmus once or twice for the Company ; I paid him assessments on my notes ; he called on me for them.

*And being re-examined in chief:* I had a policy in that Company upon my dwelling-house ; I renewed that policy twice ; I had another original policy on my work-shop, and that I have renewed once ; I obtained the policy on my work-shop after I 40

came to live in Belleville ; the amount on the dwelling-house was fifteen hundred dollars, and now seventeen hundred dollars ; the amount on my shop and tools is one thousand dollars.

Q. State whether, when you took out these policies respectively upon your house and shop, you paid the money and gave what they call the premium notes before you received the policies, or at the time you received the policies ?

I paid at the time I received the policy ; I believe I gave the premium notes at the same time I paid the money ; I did the last 10 time, I know ; whether I did the first time, I can't say ; I think it was about two years ago I took the last renewal in that Company ; it may be longer than that ; it was six months after I applied for the insurance on the shop before I got the policy. I moved to Belleville in 1844 ; it was about two years afterward that I took out the first policy in this Company, which I took out myself.

*And being cross-examined* by Gov. Pennington : I have no memorandum of the date ; I trust to my recollection.

Sworn and subscribed before me, at  
 20 Newark, this 2d day of August, 1855. } RICHARD PARKES.  
 JNO. WHITEHEAD, M. C. C. }

*Melancthon S. Wickwan*, of full age, being duly sworn, produced on the part of the complainant, according to law, deposeth and saith : I reside at Jersey City, New Jersey. I am in the provision business in New York ; I have made insurances in the Belleville Mutual Insurance Company ; I made the original insurance on the twentieth day of March, 1849, on the property formerly owned, built and occupied by Peter Jackson, at Acquackanok ; I think it was a little previous to the twentieth 30 March that I made the application ; I wanted the insurance to commence on that day ; I transacted the business with Cornelius G. Van Riper ; I think he was not the President of the Company. Mr. Van Riper was one of the directors and an agent of the Company ; I think Mr. Van Riper took the survey of the property insured ; the insurance was for twelve hundred dollars ; Mr. Van Riper agreed that the policy should be made as of the twentieth of March ; I got the policy, I think, about the middle of May ; I cannot tell the reason why I did not get the policy before that time ; I called on Mr. Van Riper three times, I think, for the 40 policy, and was told that there was a press of business at the office,

or something like that, and the policy was not ready, but that I was insured from the time the survey was made; at this time I had not given the premium note or paid the money for the insurance; about the same time I got the policy I paid the money and gave the premium note; I got my policy at the office at Belleville, from Mr. Kennedy; whether I paid the money and gave the premium note to Mr. Kennedy at the time he gave me the policy, or whether I had given the money and note before to Mr. Van Riper, or not, I can't tell, but it was about the same time I got the policy that I did it; it was within one week of the time I 10 got the policy; I think I paid the money and gave the premium note to Mr. Van Riper, and I don't know whether I paid the money and gave the note until after I got the policy; Mr. Van Riper made the representation to me that I was insured at the same time he made the survey, on the twentieth day of March; it was from the urgency of the persons to whom the policy was pledged (the policy was assigned as collateral with a bond and mortgage), that I pressed Mr. Van Riper for the policy; Mr. Van Riper had said that I was insured, after the twentieth of March, and said this to me several times before I got my policy; I had seen him not 20 every day, but very often; at the time Mr. Van Riper made these representations to me I had not paid the money or given the note for the insurance; I think Mr. Van Riper did considerable business then for the Company; it was publicly known that he was the agent for the Company.

*And being cross-examined* by Gov. Pennington—*Q.* Can you state to us whether you did or did not pay the money and give the note before the policy was delivered to you?

I cannot.

*Q.* Did you call more than once for the policy? 30

I called as many as three times or more on Mr. Van Riper for the policy; I think I did not call at the office more than once for it.

*Q.* If you was insured, what did you want the policy for?

I did not consider myself safe until I had the policy; I never saw any authority to Mr. Van Riper as their agent; I may have seen it but do not recollect it; I do not remember that I saw his name as the agent of the Company; he was the reputed agent of the Company then; no fire occurred in my case; I renewed the policy with Mr. Van Riper; I think I did not get the renewal 40

at the time ; I can't tell how long afterwards before I got the renewal ; I think I paid him the money at the time when I renewed and gave him a fresh note ; he gave me a certificate of renewal on my policy ; I think the money was paid and note given at the time I got the renewal ; I do not have the policy with me or the renewal ; Mr. Van Riper does a good deal of business for people in that neighborhood.

*And being re-examined :* Mr. Van Riper held himself out as the agent of the Company at Acquackanonk.

10 Sworn and subscribed before me, at  
Newark, N. J., August 2d, 1855.  
J. NO. WHITEHEAD, *M. C. C.* }

M. S. WICKWAN.

Examination of witnesses in the above cause on the part of the complainant, pursuant to notice, due service whereof was acknowledged.

AUGUST 7th, A. D. 1855. Present, Jacob Weart and Asa Whitehead, Esqs., for complainant, and William Pennington, Esq., for defendants.

*David S. Manners*, a witness produced on the part of the complainant, being duly sworn according to law, saith : I reside in Jersey City ; I have some business in the city of New York ; President of the New Amsterdam Insurance Company, in New York ; 'tis a fire insurance company ; I am acquainted with the custom of stock insurance companies as to the time when policies take effect ; it is common usage in insuring merchandise and houses for parties making application for insurance to make it binding from the date when we know the property and the parties ; often times the policies are not made out till after, but we consider them binding from the date of the agreement, and insured from that  
30 date ; when we are not acquainted with the property, and the survey has been made and returned and the risk taken, the policy is considered binding from the day the risk is agreed to be taken, and this though the premium has not been paid ; this is the practice generally in Wall street, and I may say in the whole city ; this has reference to stock companies ; we have never paid a loss after the agreement was made to insure, before the policy was issued, that I remember, but we have paid a loss after the policy was issued and before the premium was collected, owing, it might have been, to the neglect or delay of the collecting clerk in col-  
40 lecting it. When the applicant has agreed to be insured and we

agree to insure, and 'tis entered upon our books, we should consider it binding though the policy was not issued or the money paid. It is our custom invariably, when an agreement is made to insure, to enter it upon our books. I have some acquaintance with the custom of the Hudson County Mutual Insurance Company; have considerable property insured in it; don't know that I know the usage of that Company, but in my own case I have requested insurance and requested the Secretary to enter it upon the books and make it binding, though I did not sign the notes for several days after; the note and policy were always dated as of the day 10 of making the application.

*Being cross-examined* of counsel for defendant: I am not at all acquainted with the Belleville Insurance Company, nor with their habit of doing business. In the cases referred to in New York it is customary to have it understood between us, that it shall be binding from that time, and in such case we enter upon our books the word "binding," which refers to the date above on the books; when it is not designed to bind from that date we put the word "survey;" when the survey is received we do not always issue the policy immediately upon its return; sometimes 'tis a day or so 20 after; 'tis usual to send the policies out when made, and our practice is not to dunn for the premium at that time, but send for it subsequently; sometimes parties come and get their policies, and tell us when you send your clerk we will pay the premium; I speak of stock companies in contra-distinction from mutual companies; I have no knowledge of the custom of the Jersey City Company, except in relation to my own insurance of them; there is sometimes thirty days before we get our money upon the policies in the Company of which I am President.

Sworn and subscribed before me, this } 30  
 seventh day of August, A. D., 1855. }  
 HENRY J. MILLS, } DAVID S. MANNERS.  
 Master & Ex. in Chancery, N J. }

*Thomas Fanning*, a witness produced on the part of the complainant, being duly sworn according to law, saith: I reside in the city of New York; I am a wire weaver; I am thirty-four years of age; I was formerly in the employ of Adolphus W. Van Winkle, when he did business at Acquackanonk in his wire factory there; I was in his employ in the same business at Jersey City afterwards; I continued in his employ there till he was burned 40

out, which was April twenty-second, 1849, in the night of the twenty-third of April, on Sunday; it was machinery that was destroyed by fire that night; all the machinery in the rear building was destroyed that night, with stock and tools; in the front building considerable was saved and some part lost; in the rear building all was lost; the machinery and tools used in both buildings were the same used in Acquackanonk, with the addition of other tools; some of the stock, manufactured and unmanufactured, was brought from Acquackanonk; there was new additional stock added after  
 10 at Jersey City; the stock was being received, manufactured and sent away continually; the machinery and stock brought from Acquackanonk had been insured there, as I understood, in the Belleville Insurance Company. I do not know any thing how this fire occurred. I was the foreman of the factory; I had the oversight and control of the factory, when Mr. Van Winkle was absent; had charge of the key; I shut up the building the Saturday night previous to the fire; I was not there on the Sunday; I was at home in bed in Jersey City, at the time the fire occurred, which was between twelve and one o'clock, Sunday night, or  
 20 thereabouts. I understood that this property had been insured after it was removed to Jersey City, from Mr. Van Winkle, Mr. Vanderbeck and others, in Jersey City; I know that on Monday morning after the fire, Mr. Van Winkle received a letter from Belleville; I understood that it was from the Belleville Insurance Company; I understood this from Mr. Van Winkle and others; I understood it that time; I knew that Mr. Van Winkle started to go to Belleville about his insurance on Monday after the fire; that letter I think, if I recollect right, was received before he went away to go to Belleville; I saw the letter when it was brought  
 30 around, but not its contents; it was post-marked "Belleville;" don't remember the date of the post-mark; this factory was situated on Railroad avenue, I think in Harsimus, as it was called at that time.

*Being cross-examined* by counsel for defendants, the counsel of the defendants objects to so much of the testimony of this witness as relates to his understandings, particularly so when derived from the complainant. The witness being cross-examined, saith: I did not hear any thing about the insurance upon the property at Jersey City, until after the fire had taken place; I could tell  
 40 how much of the property at Jersey City had been at Acquacka-

nonk after some time, but not at present; Mr. Van Winkle did not carry on the business after the fire but abandoned it altogether.

*Being re-examined*: I know of Mr. Van Winkle's order to take down a forge at Jersey City that had been erected there; it stood between the front and rear building, and was thought to be dangerous; it was erected during his absence and when he returned he ordered it to be taken down; I think he said it would affect his insurance to remain. [The defendants' counsel objects to declarations of complainant on his own behalf and to his answer.] This was before the fire. 10

*Being cross-examined*: 'Twas several weeks before the fire; I can't tell exactly; we got down to Jersey City with part of the machinery about the first of January, and got the rest of machinery from time to time, and got to work about a fortnight after that; I can't tell how long after we got to work that this forge was put up; 'twas several weeks before the fire.

Sworn and subscribed before me, this  
seventh day of August, A. D., 1855.  
HENRY J. MILLS,  
*Master & Ex. in C., N. J.*

THOMAS FANNING.

## DEFENDANTS' PROOFS.

Examination of witnesses in the above cause, on the part of the defendants, on this sixth day of May, 1856, had at my office in the city of Newark, New Jersey, pursuant to notice, due service whereof was acknowledged by counsel of the complainant. The witness produced was examined pursuant to an order of the Chancellor, subject to all legal objections. Present, William Pennington, Esq., for defendants, Jacob Weart and Asa Whitehead, Esqs., for complainant.

10 The complainant objected to the examination of John Kennedy, on the ground that he was interested in the event of this suit.

*John Kennedy*, a witness produced on the part of the defendants, being duly sworn according to law, doth depose and say : I reside at Belleville, at Essex county, New Jersey. I was the Sheriff of the county of Essex for the last three years ; I am the Secretary of the Belleville Mutual Insurance Company, defendants in this suit, and have been ever since the Company was organized ; I am not a director of the Company ; I have no existing policy or interest in the Company ; Simeon Baldwin is the President of the Company at the present time, and has been so for a year past ;  
 20 Abraham Van Riper was the President before him for some four or five years ; I am not positive as to the time ; John Williams was the President before him, from the commencement of the Company ; I am acquainted with Adolphus W. Van Winkle, the complainant in this suit, and have been for a number of years ; I remember Mr. Van Winkle's making application for an insurance on property in a building at Acquackanonk, in Passaic county, through Cornelius G. Van Riper ; after I received the survey from Mr. Van Riper I made out the policy, signed it as Secretary, took it to John Williams, the President, who also was one of the  
 30 executive committee, to refer it to the other committee man, Nicholas N. Joralemon ; I left the policy with Mr. Williams ; I either saw him or called on him a day or two afterward to get the

policy ; he refused to give it to me, saying that after consulting Nicholas (I give you his own words as near as I can recollect them), they had concluded not to take it, and he retained the policy ; John Williams, Nicholas N. Joralemon and myself constituted the committee on the subject of insurance at that time ; (Exhibit W. No. 2, on the part of the complainant being shewn to the witness, he says) : that is the policy I made out and handed to Mr. Williams, the President ; I believe the President signed it ; I understood so from him ; the way the signature come to be torn off of the policy is this : when Mr. Williams returned the policy 10 to me, he tore it off himself ; I took the policy to Mr. Williams and he said he would consult Mr. Joralemon, the other committee man, about it ; after he had consulted Mr. Joralemon he refused to give me the policy, and told me to tell Mr. Van Winkle to call on him ; he said they would not take the policy after examining the survey. Mr. Van Winkle called at the office a few days afterward for the policy ; I told him Mr. Williams had it and he must go and see him ; there was a talk between Mr. Van Winkle and me about it, but that was the substance of it ; he seemed to be displeased about it ; Mr. Van Riper sent me a note at the time of 20 the application ; this is the note. (The counsel of the defendants here showed the witness a paper purporting to be a note for \$121:25, signed by A. W. Van Winkle, which note was offered in evidence by counsel of defendants, and by me marked Exhibit P. No. 1 on the part of the defendants.) If the policy had been granted the note was not right ; it was wrong in this : the amount of the note was not enough ; I made out another note to correspond with the policy, numbered it, dated it, ready for Mr. Van Winkle's signature. (The counsel for the *plaintiff* here offered a paper in evidence which I have marked Exhibit P. No. 2. The 30 paper is a blank note, not signed, for \$123:75, dated the twelfth day of August, 1848, which I have marked Exhibit P. No. 2, the counsel of complainant objecting thereto.) That is the note I made out ; these two notes I took and laid away, one side, in the office. At the time I told him Mr. Williams would not insure him he said he was insured ; I do not remember that any thing was said about the note ; he did not take it away ; he said he was insured. The policy was never delivered to me by the President before he told me they would not insure him ; the policy was never delivered by me in any shape or form to Mr. Van Winkle ; it 40

could not be ; the policy was in the hands of the Company at the time it was produced as an Exhibit in this cause. There were assessments made upon the notes of the Company for losses, after these notes were in my hands ; to ascertain whether any assessments were made on Mr. Van Winkle I must look at the books ; I have now looked at the books, and I find no assessment ever made upon the note of Mr. Van Winkle, marked Exhibit P. No. 1.

Q. Were these notes or either of them ever treated as the property of the Company in any way ?

10 No, sir.

Q. Were they not always held by you, as Secretary, subject to the order of Mr. Van Winkle ? (Objected to as leading.)

I always considered them as not the property of the Company and that Mr. Van Winkle always had a right to come and get the notes. *I would further state that the policy was never recorded in the books of the Company ; never were assessed or entered on the assessment book of the Company, and the number of the policy, No. 1172, was issued to George Kingsland, recorded on the record of the office, and has been assessed in every assessment*  
 20 *since it was issued.* [This part of the answer italicised objected to by counsel of the complainant, as irrelevant.] I remember Mr. Van Winkle's removing his establishment to Hudson county, Jersey City, I think it was ; it appears that Mr. Van Winkle removed his goods to Jersey City or Van Vorst, and applied to the Company to have this policy transferred to the same goods there ; Mr. Van Winkle wrote to me on the subject some time, I think, in February ; I have his letter here ; I think I answered his letter in writing ; I have no copy of my answer ; the application to transfer the policy was made some time in February, 1849 ; I  
 30 believe I received another letter from him in March, dated the twelfth of March. (A paper being here shewn to the witness, dated Jersey City, twelfth of March, 1849, signed A. W. Van Winkle, he says :) this is the letter ; these are all the letters I have received from Mr. Van Winkle on the subject. Before the fire, to the best of my recollection, I kept no copies of the letters I sent to Mr. Van Winkle ; I had a conversation with Mr. Van Winkle about the last policy ; he wanted his property insured ; submitted a proposition to the executive committee ; I have no right to insure ; I have to do the biddings of the executive committee ; they at first refused to take the risk ; it was pressed on

them; finally they consented to take it at three per cent. premium; I wrote to Mr. Van Winkle, stating to him their determination; I heard nothing from Mr. Winkle until some time afterward; it must have been several weeks; two or three weeks at all events; I met him in Paterson; he then asked me if I had made out his policy; I told him no; we talked over the matter at Paterson; he then requested me to make it out; I told him about the three per cent.; he said it was very large or high, some thing to that effect; he requested me to make out the policy and send it to him at Jersey City; I made out the policy and note, had it 10 signed by the President; the policy, I wrote a letter, inclosing the note, to Mr. Van Winkle, I think, directed to Jersey City, and as near as I can recollect, stated in the letter that when he returned me the note and fee I would enclose the policy. (The complainant's counsel, upon notice from the defendants' counsel, produced a letter which is shewn to the witness, and he says:) This is the letter I sent to Mr. Van Winkle. (The said paper I have marked Exhibit P. No. 3, on the part of the defendants. Upon the like notice the complainant produced another paper which being shewn to the witness, he says:) I believe it is the 20 same note enclosed to Mr. Van Winkle, in the letter last referred to; (which paper I have marked as Exhibit P. No. 4, on the part of the defendants.) I suppose I must have seen Mr. Van Winkle at Paterson two or three days—a few days before writing him the letter; this last letter was left in the post-office at Belleville, on the twenty-first day of April, 1849, as appears by the post-mark upon the letter; at that time letters left in the office about seven o'clock, A. M., went to New York and Jersey City the same day, if left after seven they did not go till the next day; that is the rule now, and I think it was then, though I am not positive; the 30 mail closes at eight o'clock; I have no recollection whether or not this letter was put in the office on the twenty-first before the mail closed; this note was not signed when it went out of my hands.

Q. Will you state what passed between you and the complainant, Adolphus W. Van Winkle, when he first saw you after the fire had occurred?

Mr. Van Winkle called on me, or at least I saw him, in the village of Belleville, and asked me about his policy, or whether he was insured; I told him that when I had the deposit note and premium of course he was insured; he tendered me, or at least he 40

offered me the note and money, after I had heard that his property had been burned, which I refused to take ; there was a talk between us but I have no recollection what it was ; it was about the policy—about the insurance.

Q. Did he ever offer you the premium note for this policy before the fire ?

No, sir.

Q. Did he ever offer you the money that was to be paid before the fire ?

10 No, sir ; I never delivered the policy in this case to him.

Q. I wish you to state, if you can, what passed between you and Mr. Van Winkle at this first interview after the fire.

I believe that Mr. Van Winkle asked me if he was insured ; I think I replied yes, when the premium and deposit note was placed in my hands ; at this time I did not know that there had been a fire ; he did not tell me when he first came there, there had been a fire ; I don't recollect how I found out there had been a fire, but I think some parties up town told me Mr. Van Winkle had been  
20 my duty in those cases ; I knew what the charter required, and lived up to it as near as I knew how ; I am not positive where it was I first saw him ; I think it was on the platform in front of the office, when he and Mr. Snyder, I think it was Mr. Snyder, but I wont be positive of that—*drove up*.

Q. Did he not conceal from you evidently, when he first came there, that there had been a fire ? [Objected to as leading.]

Mr. Van Winkle gave me no intimation, when he first saw me, about the fire ; I cannot say that a fire had taken place the previous night ; I heard that he had been burned out.

30 Q. Had you any authority from the Company, or any committee of the Company, or officer of the Company, to say that any person was insured before receiving the premium note and the money, and delivering them the policy of insurance ?

I had not.

Q. Did you ever say to Mr. Van Winkle, the complainant, or to any other person, that he was insured in this case, or would be so considered before delivering to you the premium note and the money and getting his policy ?

I answer no, and refer to the letter I wrote to Mr. Van Winkle,  
40 the last letter, marked Exhibit P. No. 3.

Q. Look at Exhibit W. No. 3, now shewn to you, and say, is that the policy made out in this case ?

Yes, sir. That policy was never out of the hands of the Company, to my knowledge ; that policy was put into my hands to be delivered to Mr. Van Winkle when the note and premium was placed in my hands, which was never done. I remember no instance of our delivering a policy to any person without the note and premium ; I may have let them have it to look at.

Q. Do you recollect any case of letting parties have policies without the money being paid ?

10

I have done this : I have received the deposit note, given them the policy, and charged myself with the fee, on the books, marked the policy paid, and recorded it on the book ; by the fees I mean the money that was to be paid, the premium money ; there was no understanding at all in this case with Mr. Van Winkle, that I was to charge myself with the money that would be paid ; I have a recollection of a transaction with Mr. Satterthwaite about a policy of his ; I think it was Mrs. Sheaf's policy ; he lives on a farm that belongs to his mother-in-law, Mrs. Sheaf ; as near as I can recollect Mr. Satterthwaite brought me the premium note and 20 said he would like to have the policy, but had not the money ; I told him that he might take the policy, I would charge myself with the money, which I did at the time, and some short time afterwards he handed me the money or his check.

Q. Was there ever in that Company any idea expressed, as far as you know and particularly by yourself, that any person was to be considered as insured from the time the survey was made ?

No, sir ; *for this reason : all the surveys taken by the different surveyors were submitted to the executive committee, and marked by the President accepted ; I made out the policies ; those returned without the word accepted were not made out, but were considered null and void.* [This part of the answer italicised was objected to.] We always considered John Williams, the President, a very careful business man ; all the directors of the Company had the right to take surveys ; these directors had no rights entrusted to them beyond taking surveys, except as directors.

Q. Had Nicholas N. Joralemon or Cornelius G. Van Riper any authority, without the action of the board or the committee, to make insurances or to say that any person was insured ?

They had not ; I had no such authority, nor had the President 40

or any other person, in their individual capacity, any such authority.

*And being cross-examined*, the witness says: I have been a member of this Company; I was a member when the Company was organized first, and continued until Saturday last; on Saturday I cancelled all my policies; on Monday the directors met; I told them that I had withdrawn from the Company, wanted to pay up my dues to the Company, and requested that the President might make out whatever they had against me, so  
 10 that I could pay them and get their receipt, which they gave me; I had some three or four policies in the Company, previous to the cancelling of these policies; by examining the book I find I had seven subsisting policies; the amount of premium notes in aggregate was four hundred and sixty-one dollars; there were seven premium notes in all; the board made up the calculation of the amount of my dues to the Company, was forty-six dollars and ten cents; that result was arrived at upon the principle, I suppose, of what they supposed this Company was in debt; there was no resolution passed or recorded, to my knowledge, by the board of  
 20 this proceeding, relative to my indebtedness; I stated to the board that I had cancelled my policies, that I wanted to withdraw from the Company, I wanted them to make out what I owed the Company, wanted my premium notes returned to me, and a receipt in full for what I owed the Company; the President and some others went to work, made out the amount, drew the receipt, and gave it to me; that was all that was done at the time; nothing has been done since, to my knowledge; after my discharge they went on and laid an assessment of ten per cent. to pay an indebtedness of  
 30 premium notes of the Company; these policies have not been cancelled in any other way than by entries on the books of the Company, cancelled; that is the way it is done; if a man comes and wants his policy cancelled, we take his policy, write on the books "cancelled" after he pays up his dues to the Company; he leaves his policy with the Company; returns his policy and takes up his note; I did not bring these policies before the board and deliver them up; they are marked "cancelled," and put with the other old policies in the office; the notes were delivered to me. In making out the amount of what is due on the premium notes  
 40 the losses and expenses of the Company are taken into account;

in making up the account of what was due from me, this claim of Mr. Van Winkle's was not taken into the account, to my knowledge; I suppose it was not; Cornelius G. Van Riper was not surveyor or agent of the Company at Acquackanonk; he was a director; Mr. Van Riper has received premium notes and the money frequently, and sent the money and notes to me, as Secretary, with the surveys, and in several instances the committee have refused to take the surveys and the notes and money have been returned to Mr. Van Riper. The first policy in the name of Mr. Van Winkle, signed by the President and Secretary, was never delivered to me by the President after I had given it to him, until after the commencement of this suit, and when it was delivered to me the name of the President was torn off; don't think it was delivered to me until after the suit was commenced; I am not positive.

*Q.* Was not the conversation you have mentioned with Mr. Van Winkle, which you think was in the presence of Mr. Snyder, on the platform in front of the office, some time before the last policy was made out, and before your letter to Mr. Van Winkle, of the twentieth of April, 1849, was written? 20

My impression is that it was a day or two after the fire took place, although I might have had conversations with Mr. Van Winkle previous to that in front of the office; I think in passing up the street one day, I saw Mr. Van Winkle and Mr. Snyder up town, near the Mansion House, or between the Mansion House and Mr. Lloyd's, but I am not positive; I think this was previous to the fire, but I am not certain of that; if I did so see them I have no recollection of having any conversation with Mr. Van Winkle. In the first conversation we had after the fire he gave me no intimation that he had been burned out, but tried to draw out of me whether he was not insured. 30

*Q.* When you answered Mr. Van Winkle, as you say you did, that he was insured when the premium note was delivered and money paid, did you not know that the premium note had not been delivered, and the money not been paid.

I did; I knew it had not been delivered or paid to me.

*Q.* Were there any other persons to whom the money and note could be paid and delivered?

The President could receive them.

*Q.* Was the President in the habit of doing that? 40

Very seldom ; in my absence he would do it ; when I would leave home for a day or two, I would make out the policy and the premium notes, and leave them with the President, and he would receive them in such case ; this was generally confined to such cases, and in this case I did not leave the policy of Mr. Van Winkle with the President for the purpose of receiving the premium notes and money.

*Q.* Do you remember any conversation with Mr. Van Winkle in the presence of John A. Van Riper, after the fire ?

10 I remember, I think I do, of meeting Mr. Van Riper and Mr. Van Winkle, about the time of the fire or a little after, somewhere up town in the village of Belleville ; it is impossible for me to recollect what was said ; I think Mr. Van Winkle asked me some question ; he asked me in the presence of some person, I cannot say whether it was Mr. Van Riper or Mr. Snyder, I could n't say which—if he was insured ; I told him, as near as I can recollect, if the money was paid and the note was given to me his policy was ready for him, and he would then be insured, or words to that effect ; I have some recollection of Mr. Van Winkle, either in the  
20 conversation in the presence of Mr. Van Riper or Mr. Snyder, the morning after the fire or about that time, asking me about his papers ; I told him I had mailed the papers to him, at Jersey City ; I think I told him he was insured as far as I could insure him ; I have no recollection of Mr. Van Winkle's telling me, in that conversation, that his property had been burned ; it must have been two or three days after I wrote the letter to Mr. Van Winkle, of the twentieth of April, that I had the conversation with Mr. Van Winkle ; I did not say in that conversation that he was insured to all intents and purposes, but I said, as I said before,  
30 he was insured as far as I was concerned ; I had done all I could do ; it is more than I can tell, how much money was paid by Mr. Van Winkle on the policy on his property at Acquackanonk ; the money was paid to Mr. Van Riper. (Exhibit P. No. 1 being here shewn to the witness, he says :) The filling up of this paper and the endorsement on the back of it, I believe to be in the handwriting of Mr. Van Riper ; Mr. Van Riper did not pay over to me the amount he received from Mr. Van Winkle, to my knowledge. Mr. Van Winkle claimed that he had paid to Mr. Van Riper a certain sum of money, which Mr. Van Riper admitted he had  
40 received ; the committee agreed to give Mr. Van Winkle credit

for this amount on the last policy, being six dollars and eighteen cents, as I see by memorandum on the last note ; Mr. Van Riper was in the habit of settling with the Company for the money he had received, at short intervals ; he did not pay over this money he had received from Mr. Van Winkle, not to my knowledge. (Exhibit W. No. on the part of the complainant, being shewn to the witness, he says :) This is in my hand-writing. (A letter, purporting to be dated March first, 1849, being shewn to the witness, he says :) This is in my hand-writing. (The counsel, therefore, offered the last mentioned letter in evidence, and I therefore 10 mark the same Exhibit W. No. on the part of the complainant.) (Another letter, purporting to be dated February the twelfth, 1849, being shewn to the witness, he says :) This is in my hand-writing. (The counsel of complainant hereupon offered the last mentioned letter in evidence, and I have marked the same Exhibit W. No. on the part of the complainant.) (A letter, purporting to be a letter from the complainant, directed to John Kennedy, dated March the twelfth, 1849, being shewn to the witness, he says :) This is a letter I received from Mr. Van Winkle at that date. (A paper, purporting to be a letter from Adolphus W. Van Winkle, dated April the twenty-fourth, 1849, being shewn to the witness, he says :) This is a letter I received from Mr. Van Winkle through the post-office. (The counsel of the complainant hereupon offered the last two mentioned letters in evidence, the same being produced by the defendants, and I thereupon marked the same Exhibits W. Nos. on the part of the complainants. A paper, purporting to be a receipt signed by Simeon Baldwin, President, being shewn to the witness, he says :) This is the receipt I have mentioned before as given by the Company. (The counsel for the complainant hereupon offered the said receipt in 30 evidence, and I have marked the same Exhibit W. No. on the part of the complainant.) The money paid by Mr. Van Winkle on the first policy, was never returned to him, to my knowledge ; the premium note prepared by me on the first policy, and marked Exhibit P. No. 2, was never shewn by me to Mr. Van Winkle, not to my knowledge.

*And being re-examined in chief:* Last Monday when I settled with the Company, it was the annual meeting of the board for swearing in the directors. By the rules of the Company any person may cancel his policy and take up his note, by paying up 40

the dues on it to the Company ; I have done this and so has the President, without the action of the board ; there is no resolution about it ever passed or acted on by the board. (A letter, purporting to be signed by A. W. Van Winkle, directed to the witness, being produced and shewn to the witness, he says, said paper being post-marked at Jersey City, February the tenth :) This letter I received about the time it is post-marked. I suppose as to the return of the money paid by Mr. Van Winkle on the first policy to Mr. Van Riper ; I mean to say I know nothing about it ; I never paid it over to Mr. Van Winkle ; I am Treasurer of the Company and always have been.

Sworn and subscribed before me, at }  
 Newark, N. J., May 6th, 1856. }  
 JNO. WHITEHEAD, M. C. C. }

JOHN KENNEDY.

Examination of witnesses on the part of defendants, on this thirteenth day of August, 1856, held at my office in the city of Newark, New Jersey. Present, William Pennington, Esq., for defendants, Asa Whitehead, Esq., for complainant.

*Nicholas N. Joralemon*, a witness introduced on the part of  
 20 defendants, being duly sworn according to law, doth depose and say : I reside in Belleville, county of Essex ; I have been a director for several years of the Belleville Mutual Insurance Company ; I am so now ; I forgot, I am not a director ; I was thinking of surveyor ; I am surveyor now and have been so for several years. The office of surveyor is to examine property and report to the finance committee the situation of the property ; the surveyor has no power to insure.

Q. Do you know of any such thing in that Company as a person being insured till the policy is issued ?

30 I never knew of a property being insured until the notes were given and money was paid ; as to the policy I can't say ; I knew that they laid in the office sometimes for some time ; the surveyor has no power to insure in that Company ; I was required, upon insurance of my own property, to give the notes and pay the money before it was insured.

Q. Can you mention of any instance of any person being insured in the Company until he had given the notes, paid the money and received the policy ?

None that I know of. I have been surveyor ever since the  
 40 Company started, with the exception of one year, and a director

until this last year; I may have been out of the direction another year some years ago.

*Q.* Do you remember after the fire Mr. Van Winkle, the complainant, coming to Belleville?

I did not know until after he was there and had gone, that it was after the fire, when I understood that his property was burned. I think it was Monday morning when he was there.

*Q.* Did you tell him any thing about his being insured?

Don't recollect precisely what passed between Mr. Van Winkle and me; I might have said he was insured, and I might not. 10

*Q.* Was you authorized to say he was insured by any body?

No, sir.

*Q.* Did you know whether he had given his notes and paid his premium at that time?

I did not.

*Q.* Whatever conversation you had with Mr. Van Winkle that morning, did you mean to say any thing more than that the Company had agreed to take his risk? (Question objected to by complainant's counsel.)

I did not intend to say any thing more than what I was instructed 20 to say by the Company, to all questions of that kind; I did not say any thing more than that the Company had agreed to take his risk.

*Q.* Did you know that the policy had been made out at that time?

I did not.

*Q.* Had you any authority, as director or surveyor of that Company, to declare when persons were or were not insured?

I had none.

*Being cross-examined* by complainant's counsel, witness said: 30

*Q.* Did you make a survey of this property of Mr. Van Winkle's at Jersey City?

No, sir.

*Q.* Did not the Company make many insurances of property of which you did not make the survey?

Yes, sir.

*Q.* Did not Cornelius G. Van Riper act as agent, or otherwise, of the Company—effect insurances for them?

Not as agent, but he acted as surveyor.

*Q.* Did he not effect insurances for the Company at Acquacka- 40 nonk, for people residing thereabouts?

I never knew of his effecting any ; I knew of his surveying property and submitting it to the finance committee.

*Q.* After such submission to the finance committee did they not authorize him to consummate such insurances ?

It generally goes from the committee to the Secretary and President to complete, and then it goes to the hands of the applicant. In some cases, when the survey is not fully made out, to save the necessity for making further alterations, I am instructed by the committee as to amount or otherwise, to make some alterations.

*Q.* Was you a director of the Company in the years 1849 and 1850 ?

I can't recall the years ; I was a director when the fire happened and for some time before and afterwards.

*Q.* On the Monday you say Mr. Van Winkle called on you, or you saw him, can you tell what you did say to him, in point of fact ?

I cannot say what did pass between us, with the exception of what I have said in my answer.

20 *Q.* You say, in your principal examination, that you did not intend to say any thing more than what you were instructed to say by the Company in such cases. Will you be so good as to state what, if any, instructions you have had in reference to what you should say in any such cases ?

The instructions I had reference to were such instructions as were generally given at our meetings of the board.

*Q.* Did the board ever instruct you as to what answer you should make to any questions that might be put to you as to whether a party was or was not insured ?

30 They never did.

*Q.* Do you know if Mr. Van Winkle sent a diagram of this property to the Company ?

I think he did.

[A paper produced here by the defendants' counsel, at the request of complainant's counsel, being shewn to witness, he is asked :]

*Q.* Whether that is the diagram referred to, and the letter of Mr. Van Winkle annexed ?

I have no recollection ; my information came from the Secretary ; I might have seen it or not ; he said he had received a 40 diagram from Mr. Van Winkle.

[The diagram and letter referred to is here marked as an Exhibit H. J. M. No. 1. on the part of complainant.]

[A paper was here produced by the defendants' counsel, at the request of complainant's counsel, purporting to be a letter from complainant to defendants, and a diagram of certain premises in Van Vorst township, Hudson county, and was marked Exhibit H. J. M. No. 2, on the part of complainant.]

[Two paper writings, purporting to be letters from John Kennedy, one dated March the first, 1849, and one dated February the twelfth, 1849, being shewn to witness, he is asked in whose hand- 10 writing is the body and signatures of the said letters :]

John Kennedy's.

Sworn and subscribed before me, this }  
 thirteenth day of August, A.D., 1856. } NICHOLAS N. JORALEMON.  
 HENRY J. MILLS, }  
*Master & Ex. in Chancery, N J.* }

The above mentioned letters were here marked as Exhibits H. J. M. Nos. 3 and 4, respectively, on the part of complainant.

HENRY J. MILLS, *Master in Chancery.*

*John Williams*, a witness produced on part of defendants, being 20 duly sworn according to law, saith : I live at Belleville, Essex county, and was the President of this Company two or three years as near as I can recollect ; I am now neither President nor director of this Company.

Q. When were persons in your Company considered insured ?

When they handed in the notes and paid the assessment, then I considered them insured.

Q. Was it not necessary that they should have a policy also ?  
 (Question objected as leading.)

Yes, sir ; that follows, of course ; if I go to be insured I pay my 30 money, give my note, and then of course have my policy.

Q. Did you ever consider a person insured before getting the note and the premium money ? Was there any such practice in the Company ?

No, sir ; I know of no such practice.

Q. Had the surveyors of the Company any right to insure ?

Not to my knowledge.

*Being cross-examined*, witness said :

Q. What is your age ?

I am in my seventy-seventh year.

Q. Was you President of this Company in 1849 ?

I can't say that—I think I was President at the time Mr. Van Winkle made his application to insure his property in Jersey City.

Q. When policies of insurance were to be issued by you, was it not the custom of the Secretary of the Company to bring the policies to you and request your name to them ?

I can answer that in part, and not in part ; sometimes they might have been brought to me and often times I signed them in the office.

10 Q. Do you remember signing the policy in this case to Mr. A. W. Van Winkle ?

I believe I did.

Q. Did you leave it in the hands of Mr. Kennedy, the Secretary ?

Yes, sir ; I believe that was the case.

Q. Do you remember Mr. Van Winkle calling upon you and offering the premium or assessment note, and the money that was payable on the policy ?

Yes, sir ; I believe he did.

20 Q. Can you tell at what time that was ?

I don't know that I could ; I made no minute of it ; it appears to be about the time Mr. Joralemon stated that Mr. Van Winkle was up to Belleville ; it was the same day he was at Mr. Joralemon's ; I expect it was after the fire ; I believe it was the day after the fire.

Q. If the note was given and the money was paid, was it not understood that from that time the applicant was insured, though the delivery of the policy was not made then ?

30 Well, I do not know of any such cases, because people generally took their policies when they gave their notes and paid their money ; that was the way I always did.

Q. Who was the active man in managing the affairs of the Company ?

Kennedy was the Secretary, and there was generally a committee to look over the policies and approve of them, and I signed them.

Q. Have you any existing policy or policies of insurance in this Company now ?

Yes, sir.

40 Q. How many ?

I have but one, sir, of \$2,000.

Q. Then are you not interested in this law suit ?

I could not answer that question ; I can't tell whether I am or not ; I can't tell out of what notes this loss would be paid.

[The deposition of this witness is objected to by complainant's counsel, on account of his interest in this suit.]

*Being re-examined in chief, witness said :*

Q. Was it usual to tender you the notes and the premium money, or was that business done by the Secretary ?

By the Secretary.

10

Q. What answer did you give Mr. Van Winkle, when he tendered you the note and premium money ?

As far as I can recollect, I refused taking it because I had learned that the property was burned.

Q. Was you in the habit of signing policies and leaving them with the Secretary, to deliver them to the parties when they gave their notes and paid their premium money ?

Yes, sir ; as I have answered before.

Q. Was not this policy signed and handed to the Secretary in that way ? [Objected to as being very leading.]

20

I believe the policy was signed and left with the Secretary for delivering, the same as others ; that is my belief at the present time.

Q. Was it to be delivered by the Secretary to Mr. Van Winkle, before he gave the Secretary the premium note and paid the premium money ?

I know of no other rule of the Company ; papers were signed and delivered to the Secretary, and he was to deliver them when the notes were given and the money paid ; I know of no other rule than this.

30

*Being re-cross-examined, witness said :*

Q. When you heard of this fire, did you not get this policy from the Secretary, and have it in your possession when Mr. Van Winkle tendered you the note and money ?

Yes, sir ; the Secretary handed it to me and I had it in my possession at that time

Q. Did not Mr. Van Winkle on that occasion demand the policy of you ?

Yes, sir; he offered me the note and the money and demanded the policy.

Sworn and subscribed before me, this }  
13th day of August, A. D., 1856. }  
HENRY J. MILLS,  
Master & Ex. in C., N. J. }

JOHN WILLIAMS.

COMPLAINANT'S EXHIBITS

EXHIBIT No. 1

John Williams, of the County of Hudson, State of New Jersey, deposes that on the 13th day of August, 1856, he was present at the residence of Henry J. Mills, Master and Ex. in C., N. J., at which place he saw and conversed with John Williams, who offered him a note and the money and demanded the policy. He further deposes that he refused to give the policy and that he advised John Williams to go to the residence of Henry J. Mills and demand the policy there. He also deposes that he saw the note and the money and that he saw John Williams take the note and the money and go to the residence of Henry J. Mills.

EXHIBIT No. 2

John Williams, of the County of Hudson, State of New Jersey, deposes that on the 13th day of August, 1856, he was present at the residence of Henry J. Mills, Master and Ex. in C., N. J., at which place he saw and conversed with John Williams, who offered him a note and the money and demanded the policy. He further deposes that he refused to give the policy and that he advised John Williams to go to the residence of Henry J. Mills and demand the policy there. He also deposes that he saw the note and the money and that he saw John Williams take the note and the money and go to the residence of Henry J. Mills.

## COMPLAINANT'S EXHIBITS.

### EXHIBIT W. No. 1.

BELLEVILLE, March 16th, 1849.

A. W. VAN WINKLE, ESQ.,

*Dear Sir*—Mr. Williams informed me to-day that after consulting with the committee, they agreed to take your property at three per cent., and requested me to write you. If you agree to it, please write and I will send you your policy at once.

Yours,

JOHN KENNEDY.

The above letter, post-marked Belleville, New Jersey, March 17, and superscribed A. W. Van Winkle, Esq., Jersey City, Hudson county, N. J.

### EXHIBIT H. J. M. No. 1.

JERSEY CITY, March 12th, 1849.

BELLEVILLE MUTUAL INSURANCE COMPANY :

*Gents*—Annexed I hand you diagram of the property where is my stock, machinery, tools, &c., upon which I ask transfer of risk by your office. I hope this is plain enough, and so that you can understand it. I do not consider the risk near so imminent as it was in its former situation at Acquackanonk. I have renewed the policy for one thousand dollars on the property until the 28th instant, in the Albany Mutual, and trust there will be no further delay on your part in making the transfer, and forwarding me policy. If there is any further charges for survey, I will be in Belleville in a few days and will pay it. The steam-engine is five 10

horse power, and boiler calculated for ten horse power, so you see there is no danger of explosion. It is on the side designated in diagram (in basement), and I burn hard coal, so that there is no danger from that source. I want the policy on looms, reeds, gears, wire, wire-cloth, drawing benches, tools of all kinds, stock and fixtures, &c., &c. Should you require any further information please write and I will cheerfully give it.

Yours, &c.,

A. W. VAN WINKLE.

Make policy in my name \$1500, and \$150 remain on my future  
10 niture.

### EXHIBIT H. J. M. No. 2.

MR. JOHN KENNEDY, Sec. Belleville Mutual Ins. Co.:

*Dear Sir*—I saw your President, Mr. Williams, yesterday, who wished me to furnish diagram of building (please find it annexed), upon which I wish my policy transferred. I have now \$1000 on the stock (here), insured in Albany Mutual Company, and want the transfer of the \$1500 insured in your office, as this in the Albany expires on the 28th instant. I also want the insertion of wire-blocks and benches, as well as tools and plates for drawing. I shall take another sum of \$1000 or \$1500 as soon as the present  
20 policy for \$1000 expires, of which due notice will be given you. I trust there will be no unnecessary delay in this matter, but that I will be notified at your earliest convenience of your action; please make the policy in the name of A. W. V. Winkle & Co., and if necessary, the note can be altered. Your attention will much oblige

Yours, respectfully,

A. W. VAN WINKLE.

Description of the premises on which I desire to be insured, is lots Nos. 9 and 10, fronting on Railroad avenue, in Van Vorst township, Hudson county, in block No. 37 on a map of the farm of Mr.  
30 Corns. Van Vorst.

## EXHIBIT H. J. M. No. 3.

BELLEVILLE, March 1st, 1849.

A. W. VAN WINKLE, ESQ.,

*Dear Sir*—I submitted your letter to Mr. Williams and Joralemon, who say if you will make out a full description of your property, with a map showing the distance from other buildings, and from the railroad, they think they will take it. Give the size of the buildings, number of feet front and how many feet deep, of each building, &c.

Yours,

JOHN KENNEDY.

10

N. B. The map you sent us we could not make out the size of building nor how far from other buildings.

The above letter post-marked Belleville, N. J., March 3d, and superscribed A. W. Van Winkle, Esq., Jersey City, Hudson county, New Jersey.

## EXHIBIT H. J. M. No. 4.

BELLEVILLE, February 12th, 1849.

A. W. VAN WINKLE,

*Dear Sir*—Your favor of the      received in answer. Your description of the property is not sufficient to make out a survey from, as you do not give the size of the lot or of the buildings. I submitted your letter and plan to the committee, who declined taking it, and authorized me to write you. Mr. Joralemon expects to be in Jersey City within a few days and will call and see you, and if the property is such a risk as we can take he will attend to it.

Yours,

JOHN KENNEDY, Sec'y.

20

The above letter post-marked Belleville, N. J., February 15th, and superscribed A. W. Van Winkle, Esq., Jersey City, Hudson county, New Jersey.

## DEFENDANTS' EXHIBITS.

### EXHIBIT P. No. 1.

— — — — —, *Applicant.*

§        ]                   For value received, in policy No.       , dated  
the     day of           , 1848, issued by the Belleville Mutual Insu-  
rance Company, I promise to pay to their Secretary for the time  
being, the sum of one hundred and twenty-one 25.100's dollars,  
in such portions and at such time or times as the directors of said  
Company may, agreeably to their act of incorporation, require.  
Given as an assessment of said policy.

A. W. VAN WINKLE.

10       In consideration of the giving of the policy above mentioned  
to the said Adolphus W. Van Winkle, and for the consideration  
of one dollar to me in hand paid, I do hereby become surety for  
the punctual payment of the above premium note, or any assess-  
ment made thereon, without requiring notice of the non-payment  
of the said note, or proof of demand being made.

RICHARD MORRELL.

*On the margin*—Received at date five per cent. and fees of  
policy.

20       *Indorsed*, No.       . Name and residence, Adolphus W. Van  
Winkle, Acquackanonk. Amount insured, \$1650. Premium  
note, \$121:25. Five per cent. paid, \$6:05; policy, \$0:50; sur-  
vey, \$1:00=\$7:55.

## EXHIBIT P. No. 2.

ADOLPHUS W. VAN WINKLE, *Applicant.*

\$123:75.]

For value received in policy No. 1172, dated the 12th day of August, 1848, issued by the "Belleville Mutual Insurance Company," I promise to pay to their Secretary for the time being, the sum of one hundred and twenty-three 75.100's dollars, in such portions and at such time or times as the directors of said Company may, agreeably to their act of incorporation, require. Given as an assessment of said policy.

In consideration of the giving of the policy above mentioned 10 to the said A. W. Van Winkle, and for the consideration of one dollar to me in hand paid, I do hereby become surety for the punctual payment of the above premium note, or any assessment made thereon, without requiring notice of non-payment of the said note, or proof of demand being made.

*On the margin*—Received at date five per cent. and fees for policy.

*Indorsed*—No. 1172. Name and residence, A. W. Van Winkle. Amount insured, \$1650. Premium note, \$123:75. Five per cent. 20 paid, \$6:18; policy, \$0:50; survey, .

## EXHIBIT P. No. 3.

BELLEVILLE, April 20th, 1849.

A. W. VAN WINKLE, ESQ.,

*Dear Sir*—I enclose you the note. You will please have it signed, and by return mail, or as soon as you can, send it to me with the per centage and I will send you your policy. You will please enclose to me \$7:20.

Yours,

JOHN KENNEDY.

The above letter post-marked Belleville, N. J., April 21st, and superscribed A. W. Van Winkle, Esq., Jersey City, Hudson county, New Jersey.

## EXHIBIT P. No. 4.

A. W. VAN WINKLE & Co., *Applicants.*

\$247:50.] For value received on policy No. 1312, dated the 18th day of April, 1849, issued by the "Belleville Mutual Insurance Company," we promise to pay to their Secretary for the time being, the sum of two hundred and forty-seven 50-100's dollars, in such portions and at such time or times as the directors of said Company may, agreeably to their act of incorporation, require. Given as an assessment of said policy.

A. W. VAN WINKLE &amp; Co.

- 10 In consideration of the giving of the policy above mentioned to the said A. W. Van Winkle & Co., and for the consideration of one dollar to me in hand paid, I do hereby become surety for the punctual payment of the above premium note, or any assessment made thereon, without requiring notice of the non-payment of the said note or proof of demand being made.

RICHARD MORRELL.

*On the margin*—Received at date five per cent. and fees of policy.

*Indorsed*—No. 1312. Name and residence, A. W. Van Winkle & Co. Amount insured, \$1650. Premium note, \$247:50. Per cent. paid, \$12:38; policy, \$0:50; survey, \$0:50=\$13:38.

## OPINION OF THE CHANCELLOR.

MAY TERM, 1857.

WILLIAMSON, Chancellor. The complainant's factory, with its fixtures and stock therein, located at Jersey City, was destroyed by fire on the 22d day of April, 1849. The complainant alleges in his bill, that he was insured in the Belleville Mutual Insurance Company, for the sum of fifteen hundred dollars. The object of this suit is to procure the benefit of that insurance. The policy of insurance, though made out and executed, was never delivered. That is the reason why a court of equity is resorted to for redress. The prayer of the bill is that a just and true account may be taken, under the direction of this Court, of the amount of the complain- 10  
ant's loss and damage sustained by him, by the destruction, and injury, by fire, of his machinery, stock and fixtures, and that upon such account being taken, it may be decreed that the said Company shall pay to the complainant the said sum of fifteen hundred dollars, or so much thereof as may be sufficient to make good the complainant's loss and damage by the fire; to which is added a prayer for general relief.

The defendants start the preliminary objection, that independent of the merits of the case, the complainant is not entitled to relief upon his bill as it now stands. The ground of the jurisdiction of 20  
this Court, undoubtedly is, to enforce the specific performance of the agreement to insure. It would have been more appropriate, and formal, to have prayed for a specific performance. But this is a mere formal matter, and is not essential. The bill states all the facts which are necessary to enable the Court to make any decree which the complainant may be entitled to, under the prayer for general relief. As a general rule the complainant, under a prayer for general relief, is entitled to any specific relief warranted by the frame and structure of his bill. (*Story, Eq. R.* § 41, 42, 43, and *Notes.* 30

Is the complainant entitled to relief ?

It is established beyond doubt, by the pleadings, and proofs, that an agreement was entered into between the complainant and the defendant for the insurance. On the 16th of March, 1849, John Kennedy, the Secretary of the Company, addressed the following letter to the complainant, and sent it to him by mail :

“ DEAR SIR :

Mr. Williams informs me to-day that after consulting with the committee, they agreed to take your property at three per 10 cent., and requested me to write you. If you agree to it, please write, and I will send you your policy at once.

“ Yours,

JOHN KENNEDY.”

The bill alleges that the complainant answered this letter, immediately, by mail, accepting the proposition. There is no proof of any answer by letter. But the complainant proves, that he did call upon Mr. Kennedy, and asked him if he had received his letter, and upon Mr. Kennedy's replying in the negative, the complainant said he had sent one to him accepting the terms of the Company. He then requested Mr. Kennedy to make out his 20 policy at once. Mr. Kennedy promised he would do so. The complainant offered to pay the balance of the money required (the Company having in their hands a small amount of money belonging to the complainant.) Mr. Kennedy said, it was no matter, that he did not know how much the balance would be, he might hand him the money at any time. The complainant then asked him if he was insured : to which Mr. Kennedy replied, yes, most assuredly, and that he would make out the policy right away and send it.

On the 20th of April Mr. Kennedy wrote to the complainant as 30 follows :

“ DEAR SIR :

“ I enclose you the note. You will please have it signed and by return mail, or as soon as you can, send it to me, with the per centage, and I will send you your policy. You will please enclose to me \$7:20. Yours,

“ JOHN KENNEDY.”

The policy was, in fact, executed on the 18th day of April, and remained in the hands of the Secretary, Mr. Kennedy. The note referred to in Mr. Kennedy's last letter was one of the printed 40 notes of the Company, which they always furnished their mem-

bers. It was filled up for the sum of \$247:50, and was to be signed by the complainant and some other individual, as surety for its payment. The letter of the 20th of April was put in the post-office, at Belleville, on the 21st of April. On the 22d of April, and before the note could be returned, the fire occurred. Afterwards the complainant tendered the note and the amount of money required, and demanded his policy, which the Company refused to deliver.

I can see no reason why the complainant is not entitled to a specific performance of this agreement. If it was entirely in parol 10 it would be no objection to giving the complainant relief. There is nothing in the statute, or in the common law, requiring such an agreement to be in writing. [*Sandford v. The Trust Fire Ins. Co.*, (11 *Paige ch. R.* 548.) *Union Mutual Ins. Co. v. Commercial Mutual Marine Co.*, (2 *Curtiss R.* 324.) *The Trustees of First Baptist Church v The Brooklyn Fire Ins. Co.*, (18 *Barb.* 69.)

But this agreement was reduced to writing. The terms were stated and made known, in writing, by the authorized agent of the Company, to the complainant, who accepted the same in writing. 20 If the fire had not occurred so soon after the making of the agreement there would have been no difficulty. The defendants interpose, now, no obstacle except that the agreement was not fully executed when the fire occurred. It was perfectly competent for either party to have stipulated that the agreement should not be binding until the papers were mutually exchanged. So far from this being the case the contrary was agreed upon by the parties. The Secretary of the Company told the complainant he was insured.

It is insisted, by the answer, that by the act incorporating the 30 Company, the agreement was not binding, until the premium note was actually deposited with the Company. The language will not admit of that construction. The section referred to, which is the 6th section of the act, declares "That every person who shall become a member of said corporation, by effecting insurance therein, shall, before he receives his policy, deposit his promissory note for such a sum of money as shall be determined by the directors, and that a part, not exceeding five per cent. of said note shall be paid," &c. The complainant has never asked, and does not now ask, that the policy shall be delivered to him until he deposits 40

his premium note as the act requires. His complaint is, that the Company will not deliver to him his policy, notwithstanding his offer to fulfill his part of the agreement by a deposit of the note. It is the refusal of the Company to comply with their part of the agreement, of which the complainant complains. If, after the agreement was made, the complainant had refused to deposit his note, the Company could have enforced the agreement, and compelled him to give the note. If a loss had occurred to any other member of the Company, the Company could have assessed a proportion of such loss upon this note, and might have appropriated the whole of it to meet the loss, if so much had been required for the purpose. If the Company could have subjected the complainant to the burthen of the agreement, it is equitable that he should be entitled to enforce it for his own benefit.

The agreement was *bona fide* entered into by the parties. Both parties considered the complainant insured. The complainant rested securely upon the representations of the officers of the Company, and upon the agreement being carried out in good faith.

The complainant is entitled to a specific performance of the agreement. There being no dispute, between the parties, as to complainant having taken all the preliminary steps to entitle him to a remuneration of his loss, if he is entitled to the policy, he is entitled in this suit to recover the same amount as he would be in an action at law upon the policy. Let there be a proper reference to a Master for that purpose.

## New-Jersey Court of Errors and Appeals.

THE LAST RESORT IN ALL CAUSES.

BETWEEN THE BELLEVILLE MUTUAL INSURANCE COMPANY AND OTHERS, *Appellants*,  
 AND  
 ADOLPHUS W. VAN WINKLE, *Appellee*. } *On Appeal*

*To the Honorable, the Court of Errors and Appeals of the State of New Jersey.*

The petition of the Belleville Mutual Insurance Company and others, appellants in the above cause, respectfully shows that your petitioners are aggrieved by a decree made in said cause directing an account to be taken, and establishing the right of complainant below to recover the amount of an insurance therein alleged to have been made, in the following particulars, to wit :

1. That the said decree adjudges that the complainant below is entitled to recover the amount specified in the agreement for an insurance, although the money for such insurance was not paid or any note given under the provisions of the charter, or policy delivered. 10
2. That the decree declares the complainant below entitled to a decree for an account of his loss, without any decree of the court, for a specific performance, and without any prayer in the bill for that purpose.
3. That the decree is founded on the idea that a contract or agreement for a policy, made by the complainant below with the said Company, was as binding after a fire, in case that event intervened, as before, and that a fire occurring before a completion of the contract, and a fulfillment of his part of the contract, did not vary the liability of the parties.

4. That the decree is erroneous in not requiring the complainant below to fulfill his engagement to the Company, by giving a premium note with surety, and paying the money required thereon, as a condition precedent to his being insured.

5. That the decree is made in violation of the charter and by-laws of the Belleville Mutual Insurance Company, and particularly the 6th section of the charter, and the 10th article of the by-laws.

6. That the decree, in effect, does away with all necessity for a  
10 policy to be made out or delivered, for the giving any security or premium note or paying any premium money, all of which are required before a fire occurs to render the Company liable.

7. That the decree directs an account to be taken in favor of the complainant below, when it should have been for the defendants below, with costs.

8. And that the said decree is in various other respects erroneous.