

N. J. Court of Errors & Appeals.

ABRAHAM COLLIERD,	} <i>In error to the Supreme Court.</i>
<i>Def't in error,</i>	
<i>vs.</i>	
THE MILLVILLE MUTUAL MARINE AND FIRE INSURANCE COMPANY, <i>Pl'ff in error.</i>	

S T A T E M E N T .

The defendant (plaintiff in error) is a *mutual* insurance company, incorporated by act of March 8, 1859. (Laws 10 1859, page 144.)

Sec. 13 of its charter says "That *especial* insurance may be taken without the parties thereto becoming members of said corporation, if desired by the insured." Sec. 7 provides "That *every person who shall become insured* in said company, *shall, before* he receives his or her policy *pay* such a sum of *money* and deposit their promissory note or notes for such sum or sums of money as shall be determined upon by the directors."—The company has no stock, and its ability to pay losses comes exclusively from the premiums 20 collected.

Mr. Perrin states that he had an agreement with the plaintiff (defendant in error), by which he hired his mill and machinery, and was "to pay the expenses of the insurance on that mill." The *insurance* to be satisfactory to *both Perrin and plaintiff*. The *selection of the companies* being left entirely to *Perrin*. On the first of November, 1872, Perrin ordered of Mr. Buckley, the agent of defendant, \$5,000 of insurance, not naming the companies. November 8th Mr. Buckley sent Perrin three policies of that date, accompanied

by a letter, requesting Perrin to send back by the bearer notes to cover the premium, according to agreement. Perrin retained the three policies, and sent back a note for the premium of two policies, but nothing for the premium of the policy now in suit. He said in a letter to Buckley that he would look into the standing of the Millville Company, and after he was satisfied about it would send Buckley a settlement. Mr. Buckley acquiesced in this, and heard nothing more of the matter until after the fire. Perrin says he
 10 turned over the three policies to plaintiff's clerk immediately after they were left with him, but he never notified Mr. Buckley or the defendant that he had done so, and no one ever paid, or offered to pay, either notes or cash for the policy in suit until after the fire. The policy delivered to the plaintiff itself contained an endorsement, "Make your check payable to the order of the company. Premium, \$112." (P. 52 of case.)

This was notice to plaintiff that the premium had not been paid.

20 The fire took place November 20, and afterwards plaintiff went to Buckley and said he was ready to pay the premium, and Buckley said he could not receive it.

P O I N T S .

I.

The Judge charged the jury that Perrin could not have recovered if the policy had been in his name, but that plaintiff might, if the jury found certain facts. I submit—

1. That the evidence shows that Perrin was plaintiff's agent to effect this insurance, and that his agreements therefor binds plaintiff. The delivery to him being conditional, and conditions not complied with, there is no insurance. 10
2. That the endorsement on the policy: "Premium, \$112, make your check payable to the order of the company," was notice to plaintiff that there had been no payment, and was sufficient, at least, to put the plaintiff on inquiry.

II.

The whole scope of the charter shows that the legislature intended to make *contribution to the capital* of the company, a *condition precedent* to the power to insure.

Bellville Mutual Insurance Company v. Van 20
Winkle, 1 Beasley, 344 &c.

Section 13, relating to special insurances, whereby insurers need not become members, does not affect the force of sec. 7, which requires every insurer to pay in advance.

I also submit that sec. 13 is unconstitutional in view of the provision that "every law shall embrace but one object, and that shall be expressed in the title." The title of the act,

"An Act to incorporate the Millville *Mutual* Marine and Fire Insurance Company" certainly does not express the object tried to be reached by section 13, to wit: carrying on a general insurance business without any mutual feature whatever in it.

III.

The doctrine laid down by the Supreme Court in the case of *Basch v. Humboldt Mut. F. and M. Ins. Co.*, 6 V., 429, is said to be very questionable, in a note to the case of *President L. I. Co. v. Fennell* (1 Bigelow, 100), in which
 16 latter case part of the premium had been paid. In the case of *New York Central Ins. Co. v. Nat. Prot. I. Co.*, 20 Barb., 468, the doctrine was not necessary to the decision of that case as will be seen by a reference thereto. In the case of *Pitt v. Berkshire L. I. Co.*, the Supreme Court of Mass. says, "The acknowledgement of payment in the policy is always open to explanation by proof of the actual facts." (100 Mass., 500, and 1 Bigelow, 284). In the case of *Baker v. Union L. I. Co.* (6 Abb. Pr. [N. S.] 144, and 1 Bigelow, 595), the court merely held that they would treat notes as
 20 cash when accepted as such. An attempt was made in an early case to assimilate the conditions in a life policy requiring the payment of premium to the condition annexed to a deed conveying real estate, but the court held that the analogy did not hold, and that the rules applicable to conditions, with respect to lands, did not apply. 12 East., 183, cited in *Robert v. N. E. M. L. I. Co.*, 1 Bigelow, 640.

See also cases of *Miller v. Brooklyn L. I. Co.*, 2 Bigelow, 38, and *Collins v. Ins. Co.*, 7 Phila., 201, and 2 Bigelow, 161.

IV.

The policy in this case is different from that in *Basch v. Ins. Co.* (6 V., 429).

It says, "The Millville M. M. and F. I. Co., in consideration of \$112, do insure Abraham Collerd against, &c."—"This company shall not be liable, by virtue of this policy or any renewal thereof, until the premium therefor be actually paid to the company, or its duly authorized agent."

It contains an endorsement, "Make your check payable to the order of the company. Premium, \$112." The 10 policy contains nowhere an express acknowledgment of the receipt of the consideration money, but, on the contrary, notifies the party that the company are not liable unless the premium is actually paid.

The company in 6 V., 429, incorporated in 1870 (Laws 1870, p. 500.) was a stock company, and not a mutual company, and even the word "mutual" in its title was removed by act of Feb. 6, 1872 (Laws 1872, p. 153.) The reason of the rule laid down in the *Basch* case fails in this case, and should not be applied, because it will contradict 20 the policy to show that there was no payment of premium.

V.

The charge of the judge took away from the jury the question as to whether Perrin was not the agent of Collerd, because if he was his agent, plaintiff would be bound by what Perrin said and did as to conditional delivery, whether plaintiff heard of it or not.

VI.

We submit that the loss of the memorandum (p. 32 of case,) was sufficiently shown to enable defendants to prove 30

by parol what it was, and that the judge erred in refusing to allow us to show what it was.

VII.

We submit that the judge erred in refusing the motion for non-suit, made at the trial at the closing of plaintiff's case.

VIII.

We submit that the judge erred in refusing the defendants to prove at the trial the contents of the memoranda.

IX.

- 10 We submit that the judge erred when he charged the jury that if Collerd did not know of the arrangement between Perrin and Buckley, that the company would be bound.

X.

We submit that the judge erred in refusing the defendants' motion, made at the trial, to non-suit plaintiff when both sides of the case was closed.

XI.

We submit that even if the form of the tender to Buckley was sufficient, the tender should have been made to the company, and not to Buckley.

XII.

We submit that the judge erred when he charged the jury that if they found that Collerd was a bona fide holder of the policy, and that there was a tender, that they should find a verdict for the full amount of policy, with interest, deducting premium and interest thereon. 10

The judgment should be set aside, and new trial ordered, with costs, to the plaintiff in error.

JAMES H. NIXON,
Attorney for Plaintiff in Error.
 LEON ABBETT,
Of Counsel.

N. J. Court of Errors & Appeals.

ABRAHAM COLLERD, <i>Def't in error,</i>	} <i>On writ of error.</i>
vs.	
THE MILLVILLE MUTUAL MARINE AND FIRE INSURANCE COMPANY.	
<i>Pltffs in error.</i>	

POINTS FOR DEFENDANT IN ERROR.

Action for loss by fire, Nov. 20th, 1873, on policy of insurance, dated Nov. 8th, and delivered Nov. 13th, 1873.

JOS. F. RANDOLPH,
Attorney.

A.—REFUSAL TO NONSUIT. (Assignments Nos. 2 and 4).

I. *Non-acceptance of policy.*

1st. Policy was accepted by Perrin for Collerd, so far as he was his agent.

2d. Policy was accepted by Collerd himself, unconditionally and in good faith.

II. *Non-delivery of policy.*

1st. Policy was delivered by Perrin as defendant's agent, made so by Buckley.

Sheldon v. Conn. Mut. Ins., 25 Conn., 207.

Hallock v. Commercial Ins., 2 Dutch, 268.

- 2d. If Buckley was Collard's agent, as claimed by the defendants, delivery to him was sufficient.

III. *Non-payment of premium* by plaintiff.

- 1st. The policy is not made void by failure to pre-pay premium. The *liability to pay* is suspended until payment of premium.

The *contract* took effect from its date.

Phillips on Ins. (5th Ed) §§ 25, 127, 922.

Lightbody v. N. A. Ins., 23 Wend., 18.

The *liability* began with the loss or with payment of premium, if made after loss and within stipulated time.

- 2d. *Payment was made* by Buckley's giving time, arranging for note, and making himself personally responsible for premium.

Bonton v. Am. Mut. Life, 25 Conn., 542.

Sheldon v. Conn. Mut., (cited above).

McAlister v. N. Eng. Mut., 101 Mass. 558.

N. Eng. Mut. v. Hasbrook, 32 Ind., 447.

- 3d. *Prepayment was waived* by defendant's giving time.

Sheldon v. Conn. Mut., (cited above).

Miller v. Brooklyn Life, 2 Big., 35.

Baptist Church v. Brooklyn Fire Ins., 28 N. Y., 153.

Boehen v. W'msburgh Ins., 35 N. Y., 131.

N. Y. Cent. Ins. v. Nat. Prot. Ins., 20 Barb., 468.

Baptist Church v. Brooklyn Ins., 18 Barb., 69, and 19 N. Y., 305.

Hallock v. Commercial Ins., (cited above).

Heaton v. Manhattan Ins., 7 R. I., 502.

Wood v. Po'keepsie Ins., 32 N. Y., 619.

Sheldon v. Atlantic Mut., 26 N. Y., 117.

Parol waiver good.

Miller v. Brooklyn Life, (cited above).

Pitney v. Glen Falls Ins., 61 Barb., 335.

4th. Defendants are *estopped by acknowledgment in policy* from denying payment.

Basch v. Humboldt Ins., 6 Vr., 429.

Gort v. Nat. Prot. Ins., 25 Barb., 189.

IV. *No tender of premium.*

1st. Tender was made in proper *manner* and waived by refusal.

2 *Greenleaf, Ev.*, § 603, and cases.

2 *Chitty, Contr.* (Ed. 1874), 1192 and note.

2d. Tender was made or offered in proper *time*—*within* the time agreed on.

V. *Mutual character* of defendants necessitates prepayment.

But the charter (§ 14) provides for insurance not mutual, and this is expressly a “stock policy.”

VI. *Buckley not defendant's agent.*

The evidence proved him to be such. He is called so in the policy, and their disclaimer of his agency is unavailing.

Phillips on Ins., § 1876.

Masters v. Madison Ins., 11 Barb., 624.

Malleable Iron Works v. Phœnix Ins., 25 Conn., 465.

Clark v. Union Ins., 40 N. H., 333.

B.—*Tender of premium insufficient.*

(Assignments Nos. 1, 6 and 9.)

See above—A IV.

C.—*Rejection of evidence* as to memorandum.
(Assignment No. 3.)

- 1st. The evidence was properly rejected. There was no proof of loss.
- 2d. The proof was offered by defendants to contradict their own evidence, drawn out on Perrin's cross-examination.
- 3d. The rejection did not affect the verdict.

D.—*Bona-fides of plaintiff*.
(Assignments Nos. 5, 7 and 8.)

- I. Plaintiff took policy in good faith, and would be injured by defendant's assertion that policy was not what, by their own act, they made it appear to be, and they are *estopped* from repudiating it now.

Lee v. Kirkpatrick, 1 McCarter, 264.

Den v. Baldwin 1 Zab., 395.

Den v. Oliver, 2 Smith, L. C., 543.

Pichard v. Sears, 6 Ad. and El., 475.

Freeman v. Cooke, 2 Exch., 654.

Heane v. Rogers, 9 B. and C., 577.

Gregg v. Wilson, 10 Ad. and El., 90.

Dezill v. Odell, 3 Hill, 215.

1 *Greenleaf*, Ev., § 207.

- II. To prevent estoppel there must be *actual personal notice*, destroying good faith of plaintiff, not mere technical notice to agent

- III. Knowledge of Perrin, or notice to him was not, technically, even notice to Collard, for it was not within subject matter of his agency.

Story on Agency, § 140.

New Jersey Supreme Court.

ABRAHAM COLLERD,

vs.

THE MILVILLE MUTUAL MARINE AND
FIRE INSURANCE COMPANY.

In Case.

JOS. F. RANDOLPH, Jr.,
Pltff's Atty.

New Jersey Supreme Court, of the sixth day of March, 10
in the year eighteen hundred and seventy-three.

Witness,

M. BEASLEY, Esquire,
Chief Justice.

BENJ. F. LEE, *Clerk.*

HUDSON COUNTY, ss. :

The Milville Mutual Marine and Fire Insurance Company, of Milville, in the State of New Jersey, the defendants in this action, were summoned to answer unto Abraham Collerd, of Jersey City, in the county of Hudson and State of New Jersey, the plaintiff therein, of a plea of trespass on the case on promises, and thereupon the said plaintiff, by Joseph F. Randolph, Jr., his attorney, complains for that whereas the said defendants are now, and were at the times hereinafter mentioned, a corporation duly incorporated under and by the laws of the State of New Jersey, to take risks and insure property against loss by fire, and were at the times hereinafter mentioned doing business as such corporation, and by

virtue of their corporate powers, as a fire insurance company, and as such corporation, were taking risks and insuring against loss by fire, and whereas the said defendants on or about the eighth day of November, eighteen hundred and seventy-two, at Jersey City, in the county of Hudson, and within the jurisdiction of this court, entered into a certain agreement, in writing, with the said plaintiff, commonly called a policy of insurance, and thereby, for, and in consideration of the sum of one hundred and twelve dollars, there-
 10 after, to be paid therefor by the said plaintiff to the said defendants, agreed to insure, and did thereby insure the said plaintiff against loss or damage by fire, to the amount of two thousand dollars, as follows, that is to say :

One thousand dollars on his three story frame composition roof planing and moulding mill building, fifty (50) by fifty (50) feet, including the brick boiler house attached on north side, thirty by fifteen feet, and the one story frame shed attached on east side, fifty feet by twenty-five feet, situate on the north side of Fourteenth street, commencing one hun-
 20 dred feet east of Henderson street, Jersey City, and one thousand dollars on his steam engine, boiler and appurtenances, steam pumps, machines, machinery, shafting, belting, pullies, hangers, steam pipes, tools and implements and fixtures, all contained in said mill and boiler house.

And the said defendants did thereby agree to make good to the said plaintiff, all such immediate loss or damage not exceeding in amount the sum of two thousand dollars, nor interest of the said plaintiff in said premises, as should happen by fire to the said property, from the eighth day of Novem-
 30 ber, eighteen hundred and seventy-two, to the eighth day of May, eighteen hundred and seventy-three, and further that the amount of said loss or damage should be estimated according to the actual cash value of the property at the time of the loss, that notice and proof of such loss should be forthwith given by the insured, the said plaintiff, to the said defendants, and that they would pay said amount sixty days after due notice and proof of loss, unless the property should be replaced, or they, the said defendants, should have given notice of their intention to rebuild or repair the damaged
 40 premises.

And that it was then and there agreed, by and between the said plaintiff and the said defendants, that the said plaintiff should pay to the said defendants, the said sum of one hundred and twelve dollars for said insurance, and should pay the same on or about the thirteenth day of January, eighteen hundred and seventy-three.

And the plaintiff further says, that afterwards, during the term of the said policy, and while it was in force, between said eighth day of November, eighteen hundred and seventy-two, and said eighth day of May, eighteen hundred and seventy-three, to wit: on the twentieth day of November, eighteen hundred and seventy-two, the said planing and moulding mill of the plaintiff, together with his said boiler house and shed, and his steam engine, boiler, machines, machinery, steam pumps, shafting, belting, pulleys, hangers, steam pipes, tools, implements, fixtures and appurtenances therein contained, and mentioned in and insured by said policy of insurance, were by misfortune, and without any fraud or fault, or evil practice on the part of the said plaintiff, burned, damaged, consumed and wholly lost and destroyed by fire, that the actual value of said mill, boiler house and shed at the time of the said loss was not less than twenty-six hundred and fifty dollars, that the actual value of said steam engine, boiler and appurtenances, machines, machinery, steam pumps, shafting, belting, pulleys, hangers, steam pipes, tools, implements and fixtures at the time of said loss was not less than eight thousand dollars, and that the plaintiff's loss and damage on said property insured as aforesaid, by reason of said fire exceeded the sum of ten thousand dollars, and that the whole amount of insurance upon said property, and other property of the plaintiff, destroyed by said fire, including said policy of the said defendants, was seven thousand dollars. 20 30

And the plaintiff further says that forthwith, after said loss or damage by fire, and as soon thereafter as possible, the said plaintiff gave notice to the said defendants of said fire as required by the terms of said policy, and that said plaintiff afterwards and as soon thereafter as possible, to wit: on the twenty-seventh day of November, eighteen hundred and seventy-two, rendered to the said defendants a 40

particular account of such loss, signed and sworn to by him, containing a true and particular statement of all such matters and things as by the words and conditions of said policy of insurance were required to be therein contained, together with a certificate, under the hand and seal of a magistrate or notary public, nearest to the place of the fire, not concerned in the loss as a creditor or otherwise, nor related to the assured, stating that he had examined the circumstances attending the loss, knew the character and circumstances
 10 of the assured, and verily believed that the assured had, without fraud, sustained loss on the property insured to the amount of twelve thousand dollars.

And that the plaintiff has in this and all other respects fully complied with and performed all the matters and things in and by said policy required by him to be done, and that he afterwards, to wit: on the thirteenth day of January, eighteen hundred and seventy-three, being the day therefor by said defendants agreed upon as aforesaid, offered to pay to said defendants the said sum of one hundred
 20 and twelve dollars, and tendered the same to said defendants, and is now, and always has been, ready and willing to pay to said defendants the said sum of one hundred and twelve dollars.

And the plaintiff further says that more than sixty days have now elapsed after due notice and proof were made as aforesaid by the said plaintiff, and received by the said defendants in accordance with the terms and provisions of the said policy, and that the said defendants have not replaced the said property, nor given notice of their intention to re-
 30 build or repair the damaged premises, nor have they paid to the said plaintiff the said sum of money in said policy mentioned, or any part thereof.

By means whereof the said defendants became liable to pay to the said plaintiff the said sum of two thousand dollars in the said policy of insurance mentioned, and being so liable, they, the said defendants, afterwards, to wit: on the first day of January, eighteen hundred and seventy-three, at Jersey City aforesaid, undertook, and then and there
 40 faithfully promised the said plaintiff, to pay to him the said

sum of two thousand dollars on or before the twenty-seventh day of January, eighteen hundred and seventy-three.

Yet the said defendants, not regarding their said several undertakings and promises, have not paid to said plaintiff the said sum of money on said twenty-seventh day of January, eighteen hundred and seventy three, nor at any other time, but have neglected and refused, and still do neglect and refuse, to pay the same or any part thereof, although often requested so to do.

Wherefore the plaintiff says he is injured and hath sustained damage to the amount of four thousand dollars, and, thereupon, he brings his suit, &c. 10

And the said defendants, by James H. Nixon, their attorney, come and defends the wrong and injury, when, &c., and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c.

And the plaintiff doth the like.

Therefore, &c.

Afterwards, to-wit, on the ninth day of December, in the year eighteen hundred and seventy-three, at a Circuit Court holden at Jersey City, in and for the county of Hudson, by the Honorable Joseph D. Bedle, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, come as well, the within named plaintiff, Abraham Collerd, as the within named defendants, The Millville Mutual Marine and Fire Insurance Company, by their respective attorneys, and the jurors of the jury whereof mention is made within, being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, say that the said, The Millville Mutual Marine and Fire Insurance Company did undertake and promise, in manner and form as the said Abraham Collerd hath above thereof complained against them, and that the said Abraham Collerd hath sustained damage on occasion of the non-performance of the said several prom- 20

ises and undertakings in the said declaration mentioned to the amount of two thousand and seventeen dollars and ninety-five cents, besides the costs and charges in this behalf expended.

J. D. BEDLE,
Justice Supreme Court.

Therefore it is considered, &c.

NEW JERSEY SUPREME COURT.

ABRAHAM COLLERD,
 vs.
 THE MILVILLE MUTUAL MARINE AND
 FIRE INSURANCE CO.

In assumpsit.

*Bill of
 Exceptions.*

Be it remembered, that at a circuit of the above court, holden at the city of Jersey City, in and for the county of Hudson, at the October term, eighteen hundred and seventy-three, the above cause came on to be tried before Joseph D. Bedle, Esquire, one of the Justices of the above court, upon the issue joined in said cause, before a jury of the country, duly empanelled and sworn to try the same, and a true verdict give, according to the evidence in said cause, and the plaintiff, in order to maintain and prove the issue on his side to be maintained, offered the following evidence :

Raymond S. Perrin, for plaintiff, sworn, testified as follows :

Direct examination.

Q. You are the agent of the plaintiff?

A. Yes, sir.

Q. Did you obtain this policy of insurance for the plaintiff, and from whom ?

A. Yes. I ordered it from Mr. Buckley.

Q. Is the amount of premium correctly stated in it.

A. Yes, I believe it is.

Q. How was the premium to be paid ?

A. My agreement was at the time with Mr. Buckley to pay the premium on that policy in six weeks, or I should have the privilege. My agreement was to give him a

note for the premium on that policy for six weeks from the time it was dated, or to pay it in cash before the expiration of the month.

Q. Do you know anything about the loss of the premises afterwards?

A. Yes, they were destroyed by fire about the 20th of November, I believe, 1872.

Plaintiff offers in evidence policy No. 2,719. Defendants admit the signatures to the policy as being the signatures of the officers of the company.

The policy was admitted in evidence, and is annexed hereto as "Exhibit A."

Q. Had the premium been paid by you to Mr. Buckley before that?

A. No, sir.

Q. Has it been paid by you since?

A. No, sir; I called on Mr. Buckley with the intention of settling it; he declined to have anything to do with it.

Q. When did you call on Mr. Buckley?

A. Within a week after the fire; I took the money with me to pay the premium, and a note, to settle it in that way, if he preferred it to cash; I told him I had called on him to settle that premium; he said he wouldn't have anything to do with me about that policy.

Q. Is that in your hand-writing? (showing witness paper.)

A. Part is in my hand-writing and part is not; the first three pages are in my hand-writing, the balance is not.

Q. What was the loss by fire?

A. It was a total loss; the mill and contents was burned, everything about the place, and lumber piled adjoining the mill was burned—nothing left at all.

Q. What was the value of the mill and machinery burned?

A. Something like twenty thousand dollars.

Q. How much insurance was there on it?

A. Seven thousand dollars altogether, I think; I had had

seventeen thousand dollars the year before, and paid premiums to Mr. Buckley for it.

Cross-examined :

Q. When did you order the insurance on that building ?

A. In the first part of November, I believe.

Q. Of whom ?

A. Mr. Buckley.

Q. Where were you and where was he when you did it ?

A. I was in the office of the mill.

Q. State what you said to him and what he said to you ? 10

A. I can't remember the whole conversation—we were talking for nearly an hour.

Q. Who commenced it ?

A. I couldn't say that.

Q. What did you say ?

A. I ordered five thousand dollars' worth of insurance.

Q. Did you tell him what company you wanted it in ?

A. No, sir.

Q. Did he at that time tell you what companies he would put it in ? 20

A. I don't think he did.

Q. Did he after that send you up three policies ?

A. He sent me the whole five thousand dollars' worth ; I think there were three policies ; there was two besides this—one in the Lycoming and the other in the North Missouri.

Q. What was the premium for that whole five thousand dollars insurance ?

A. I think it was at the rate of eight or ten per cent. ; about two hundred and eighty dollars, I think.

Q. Mr. Buckley sent you up with these policies, also a note requesting you to sign and return to him two notes, of \$140 each ? 30

A. Mr. Buckley sent me a letter with a boy ; I think the letter is destroyed by the fire ; as near as I can remember, the letter requested me to send back, by the boy, notes to cover the premium, according to agreement.

Q. Wasn't two notes sent up to you at the time to sign—didn't the letter enclose two notes ?

A. I don't remember ; it may have.

Q. You sent back a note of \$168 ?

A. I couldn't state what the amount of that note was.

Q. For the policies in the Lycoming and North Missouri ?

A. I believe so ; I sent back a note for part of that five thousand dollars.

Q. Wasn't it for the three thousand dollars outside of this two thousand dollars—for the Lycoming and the North Missouri ?

10 A. I don't remember the amount of the note.

Q. That note didn't include this policy ?

A. No, sir, I don't think it did.

Q. *By Court*—You think it included the other two policies ?

A. I think it did ; I am not positive about that ?

Q. Do you remember what was the premium on the other two ?

A. I don't remember.

20 Q. Do you remember the rate of the two ?

A. I thought it was about eight or ten per cent. ; I generally paid eight on that mill.

Q. Wasn't the rate for six months $5\frac{60}{100}$ per cent. on these two policies ?

A. I believe there was an extra charge on account of the short time.

Q. Isn't that the customary short rates ?

A. I think so.

Q. You did send a note for some amount ?

30 A. Yes, sir.

Q. The note was afterwards paid ?

A. Yes, sir.

Q. Do you know what bank it was paid through ?

A. I don't think it was paid through any bank ; I gave the money to Mr. Collerd, and Mr. Collerd sent his check to take up the note ; that is my recollection of it.

Q. Did you make a memorandum on the back of an envelope when you sent back the note for \$168 ?

40 A. I remember, I think, writing a letter to Mr. Buckley,

stating that I would look into the standing of the company?

Q. That is the Milville Company?

A. I think that was one of them; I think I kept two policies, doubting the standing of the other company.

Q. Are you sure you retained two policies?

A. No, sir; I think I did.

Q. What was the purport of the memorandum?

A. The purport of the memorandum was I would look into the standing of this company, and after I was satisfied about it send him a settlement.

Q. When did you next see him after you sent that down? 10

A. After the fire.

Q. Did you send any word to him before the fire?

A. No, sir.

Q. No note before the fire?

A. No, sir.

Q. No cash before the fire?

A. No, sir.

Re-direct:

Q. Did Mr. Buckley ever ask you to return the policy to 20 him?

A. No, sir, I had no communication with him whatever.

Q. What did you do with the policy after you got it?

A. I took all the policies sent me by Buckley and turned them over to Mr. Collerd, in his office; that was immediately after they were left with me.

Q. Before the fire?

A. Yes, sir.

Re-cross-examination:

Q. What did you do with the policies?

A. I turned them over to Mr. Collerd, or his representa- 30
tive; I handed them to J. A. Huson, Mr. Collerd's clerk; I
had had an agreement with Mr. Collerd to insure that mill
for that amount and give him the policies.

Q. What position did you occupy in this mill?

A. I was running the mill; I bought the lumber, paid for
the material and run the mill.

Q. What relation are you to Mr. Collerd?

A. Only a business relation—no relation by blood or marriage.

Q. You hired the mill, and all that was in it, from Mr. Collerd?

A. I hired the mill and machinery from Mr. Collerd; I was to pay the expenses of the insurance on that mill.

Q. The insurance was to be insurance that was satisfactory to you?

10 A. To both of us; Mr. Collerd always trusted me as to the companies in which the insurance should be effected.

Abraham Collerd, the plaintiff, sworn in his own behalf, testified as follows:

Direct:

Q. You are the person named in that policy as the insured (showing witness policy)?

A. Yes, sir.

20 Q. You were the owner of the premises described in the policy?

A. I was.

Q. At the time the policy was issued and at the time of the fire?

A. Yes, sir.

Q. Were the premises described there in the policy burned?

Defendants admit that the premises were burned: No question is made as to the value thereof, and that the fire was on the 21st of November, 1872; that the premises were
30 all consumed, and that the loss exceeded the total insurance.

Q. Did you see Mr. Buckley at any time about this insurance and about the premium?

A. I did subsequent to the fire; the mill was burned on the 20th of November, and I think I went to see Mr. Buck-

ley within two or three days after ; I saw him several times within ten days after.

Q. What did you go to see him for ?

Defendant objects to witness telling what occurred between witness and Buckley after the fire, so far as it is to charge the company with the contract.

Plaintiff proposes to show a tender of the money within the thirty days agreed upon between the last witness and Buckley.

The Court admitted the testimony, to show the tender 10 after the loss.

To this ruling of the Court a bill of exceptions is prayed by the plaintiff, and is allowed and sealed accordingly.

J. D. BEDLE, [L.S.]

Q. When did you first go to see Buckley about this ?

A. I think two or three days after the fire, when I first saw him.

Q. You saw him several times ?

A. Yes, I called there several times within ten days after the fire.

Q. What did you go to him for ? What was said and 20 done ? What occurred ?

A. I inquired of Mr. Buckley as to the policies ; I told Mr. Buckley I was willing to pay the premiums, he having said that it hadn't been paid ; I offered to pay him ; there was considerable said ; that is about all I remember particularly ; we spoke generally of the insurance matter ; I offered to settle it and he refused ; he told me that he wouldn't receive payment for the premium.

Q. When did you get the policy ?

A. It was handed me a few days before the fire ; two or 30 three days.

Q. What did you do with it ?

A. I put it in my safe.

Q. You have never received the amount of insurance from the Millville Company, nor any part of it?

A. No, sir, no part of it.

Cross-examined :

Q. What did Mr. Buckley say?

A. He said he wouldn't receive the premium; wouldn't take the money.

Q. All that transpired between you and him was that, after the fire, you told him you were willing to pay the premium, and he said he wouldn't take it?

10 A. That's all that was said on this matter.

Q. Did you ever make any communication to Buckley or to the company with reference to this policy before the fire?

A. Never.

Q. Never sent any word or letter or communication of any kind to him?

A. None whatever.

It is admitted that proofs of loss were sufficient in form, and that they were sent to the company.

20

Plaintiff rests.

Defendant moves that the plaintiff be non-suited, on the ground that there was no acceptance of the policy by the plaintiff or his agent. That the delivery was conditional, the plaintiff or his agent to give notes for the premium, on the delivery of the policy, which condition was not complied with, and the notes not given, and no payment made for the premium, either in cash or notes, and no tender of any until after the loss. That the company, being
30 a mutual company, according to its charter, plaintiff must pay either notes or money as premium to make a valid policy, and that he did neither. That the policy on its face did not create any liability without payment of the premium. That Buckley had no authority to deliver the policy without payment of the premium, and that the plaintiff had notice thereof by the policy itself.

The Court—I will not rule on these points yet. I am not prepared to order a nonsuit now, but will let the case be developed.

To this ruling of the Court refusing to grant a nonsuit, a bill of exceptions is prayed by the defendant, and is allowed and sealed accordingly.

J. D. BEDLE. [L. s.]

And the defendant to prove the issue on its part offered the following evidence :

William W. Buckley, for defence, sworn, testified as 10 follows :

Direct :

Q. You are the gentleman referred to by Mr. Perrin in in his testimony ?

A. Yes, sir.

Q. And you are the party who signed this policy ?

A. Yes, sir.

Q. These printed blanks are sent to you and the policies are not valid till they are signed by you as agent, are they ?

A. No, sir ; that is so stated in the policy. 20

Q. You signed that policy ?

A. Yes, sir.

Q. Did you have an interview with Mr. Perrin or Mr. Collerd with reference to the insurance of these premises ?

A. I had an interview with Perrin previous to the fire.

Q. No interview with Collerd previous to the fire ?

A. No, sir.

Q. How long before the fire was that ?

A. November 6th, 1872.

Q. State what occurred at that interview ?

A. Perrin told me that he wanted to insure the mill for 30 \$5,000 for the benefit of Mr. Collerd, but that he had no money at present, and asked me if I would insure it and take notes, and also asked me what I would charge him to insure it for \$5,000 for six months. We come to an agreement that I should insure it for six months for \$5,000 at the short rate of eight per cent. a year, which is $5\frac{60}{100}$ for

six months, which would make the premiums \$280. for \$5,000. Perrin wished me to put it in three companies, I told him I would do so; he agreed on the delivery of the policies to give me two notes of \$140. each, which would amount to the premiums \$280, one for six weeks and the other for two months, from the date of the policies. I insured it in three companies, \$2,000 in the Milville, \$1,500 in the North Missouri, and \$1,500 in the Lycoming; the premium on the Milville was \$112, and \$84. on the other two. I dated the
 10 policies Nov. 8th; I did n't get them ready till the 13th; on the 13th of Nov. I sent him the three policies by my boy, with a note, inclosing two notes drawn for \$140 each, requesting him to sign them and return them.

Q. Give us the exact wording of that note?

A. "Please find \$5,000 insurance and also two notes inclosed you agreed to give me in payment for them. Please sign and return by bearer." My boy came back with one note, neither of the notes I sent him, but one note for \$168, the exact amount of the other two policies, and on the back
 20 of the envelope—(interrupted by plaintiff objecting to his giving the contents of the memorandum on the back of the envelope.)

Q. Where is that envelope?

A. It is destroyed; I thought I had sent it to the company, but I find I didn't do so, therefore I must have thrown it in the waste paper basket.

Q. What inquiries have you made about it?

A. I have searched all around my office; I have looked
 30 through my papers, and spoke to the secretary of the company.

Q. Have you any memory that you sent it to the company?

A. I thought I sent it; I didn't think it of any importance at the time, because I thought perhaps I should see Mr. Perrin; I expected him to come down and see me, but he didn't.

Furman M. Mulford, for defence, sworn, testified as follows:
 40

Direct :

Q. What relation do you bear to the Milville Mutual Insurance Company ?

A. Secretary of the company ; prior to May last I was treasurer.

Q. You have heard Buckley's testimony, with reference to a memorandum on the back of an envelope, received from Perrin ?

A. I did.

Q. Have you made any search for such a memorandum among the papers of the company ? 10

A. I don't know as we have particularly searched for the paper ; we had his letter setting forth the facts, and we wrote to him asking him if he had preserved that ; he said he thought he sent it to us, but we never received it.

Q. You have been secretary how long ?

A. Since May.

Q. Who received the letters of the company ?

A. All of us ; a committee in there ; two or three of us. 20

Q. Do the letters pass under your inspection ?

A. Most of them do.

Q. Have you heard of any such paper in the office ?

A. No, sir. He wrote to us that he thought he sent it to us ; we wrote him that we hadn't received it.

Q. Did you search for it ?

A. We searched for it.

Q. Did you search personally ?

A. No, sir.

Q. Do you know what search was made ?

A. Not specially I don't. I conversed with Mr. Fries, 30 our present secretary, at that time ; he replied that we had never received that letter, and was sorry that it was lost.

Cross-examined :

Q. You made no search personally for it ?

A. No, sir.

Q. Do you know whether any was made ?

A. Only from conversation.

Q. Were you the officer who would have had charge of these letters, November a year ago?

A. No, sir.

Q. At that time, it wouldn't have come to your hands, or been sent to you?

A. No, sir.

William W. Buckley, direct resumed.

Q. What is your present recollection about this paper?

A. I thought I sent it to the company, till I received a
10 letter from their former secretary, stating it was not there ;
therefore, I presume, I must have thrown it in the waste
paper basket. It was simply a memorandum on the back
of the envelope which I sent him.

Q. Did it have his name on it?

A. I don't remember.

Q. *By Court*—What is your impression now as to your having sent it to the company?

A. If I hadn't received that letter from the secretary, I
should say that I sent it, because I thought I did. It was
20 my impression that I did send it.

Q. *By Court*—What time was your impression that you did send it?

A. Right after the fire ; I think the day after I wrote a long letter to the company, giving them the circumstances ; the day after the fire, November 21st.

Furman M. Mulford, recalled by the Court, and examined by the Court, as follows :

Q. How many rooms do you occupy in your office?

A. Two.

Q. Where do you keep the papers of the company?

A. In cases of this kind we file them all together in one
30 package, and the letters connected with it, till it is disposed of.

Q. What papers had you in this case?

A. We had a letter from Mr. Buckley ; that was all at that time ; we afterwards received the proofs of loss and returned them.

Q. What is your habit in the office as to filing papers you receive in regard to insurance ?

A. We file them separately ; our letters we file regularly as they come which have any bearing on any particular case ; a letter or any piece of paper that comes with reference to a loss ; we put it in a large envelope and mark the envelope, and put every piece of paper relating thereto in the envelope.

Q. Your letters you file together ?

A. Our letters we file, unless they are connected with 10 some particular loss, then we put them with that package ; as, for instance, in this case we had an envelope marked "*Collard*," they were put in a box in the office ; I looked at the papers several times, but didn't find this.

Q. How many officers have you in that office besides yourself ?

A. There are four of us.

Q. Whose work was it to file these papers ?

A. The assistant secretary generally files the letters, and does a good part of the office work.

Q. If this letter had been sent, enclosing that paper, who 20 would naturally have received it ?

A. The secretary, Mr. Freeze.

Q. Where is he ?

A. He is at Camden ; he is not with our company now ; he left in May last.

Q. Are there any places about your office for you to look for that letter except in that envelope ?

A. No, sir ; it would be our invariable rule to put everything connected with the loss in one package. We didn't 30 know that Mr. Buckley had any idea that he had sent it to us till we saw him, then we looked for it and couldn't find it.

Examined by Mr. Abbett :

Q. Do you keep files of letters in which letters are filed away ?

A. We keep them on a file till the end of the month, then we file them and date them.

Q. Do you know when this letter of Mr. Buckley's was put in the Collerd envelope?

A. When we received his letter we immediately put that letter in an envelope and marked the envelope "*Collerd matter.*"

Q. You don't think that was filed away first?

A. No, anything connected with a loss we never file among our regular business. (Mr. Abbett shows witness an envelope in which Mr. Abbett says he received the papers in the cause.)

Witness—This is the envelope that was kept in a box we have in our safe.

Q. By Court—There is no knowledge of its ever being received at the office?

A. No, sir.

10 *Mr. Randolph*—I don't think they have sufficiently accounted for it. I requested Mr. Buckley and the officers of the company to produce it.

Mr. Abbett—I have received no written notice in relation to it.

20 *The Court*—I feel obliged to reject this testimony as the case now stands. There don't appear to have been that examination for the paper that there ought to have been, still I feel reluctant to let the case go off on any such point as that. I will give counsel an opportunity to get that witness here to-morrow if he desires it.

Mr. Abbett—I think we can get him here.

William W. Buckley, direct, resumed, by Mr. Abbett:

I havn't the least doubt, from the result afterwards, but what I destroyed the envelope; it was simply a memorandum on the back of the envelope.

Q. By Court—Your conviction is based upon the fact that they said they didn't have it?

A. Yes, sir.

Q. You received an envelope from Mr. Perrin, and it had some writing on it?

A. Yes, in pencil.

Q. What did that envelope contain?

A. A note for \$168, drawn at two months from November 13th.

Q. Is that the note (showing note)?

A. Yes, sir.

Defendant offers the note in evidence, and it was admitted, 10 marked Exhibit B.

(It is admitted that the note was produced by plaintiff.)

Q. *By Court*—Is that in Mr. Perrin's handwriting?

A. Yes, I think it is.

Q. What did you do after you got this note?

A. That paid the two policies, the North Missouri and Lycoming—that was their premium; I waited for Perrin to come down and bring me back that policy which he didn't 20 accept—that is, the Milville.

Q. Did you have any conversation with Mr. Perrin about this Milville policy prior to the fire?

A. No, sir; he asked me to insure him in three good companies, and I did so, and sent them up.

A. And you sent two notes up of \$140 each?

A. Yes, sir.

Q. What did he do with them?

A. I don't know—I have never seen them since; those 30 were drawn November 8th, according to contract; that note of \$168 is not according to contract—that is November 13th; still I accepted that in payment of the other two premiums.

Q. Did you ever make any delivery of this policy to Mr. Collard or Mr. Perrin?

A. I sent it up with my boy with the others, with that note.

Q. Did you ever make any other delivery of it than 40 that?

A. No, sir.

Q. And the terms of that note, to him were they ever complied with ?

A. No, sir.

Q. Did he ever pay cash or note for this premium ?

A. No, sir ; he never has offered to.

Q. Do you know who Perrin's Co. is ?

A. He told me at the time the name of the partner, Monahan, I think, but I never saw him. I don't know
10 him.

Q. After the fire what was the first you heard of this matter ?

A. I was at the fire all night.

Q. I mean from Mr. Collerd or Mr. Perrin ?

A. I think Mr. Collerd came in first, two or three days after the fire.

Q. What did he say ?

A. He told me he had burnt out, and asked me if the companies were all right. I told him the two policies he
20 had paid for were all right, but the other was not in existence, was not in force because he hadn't accepted it ; he asked me my reasons for it ; I explained to him the transaction I had with Perrin the same as I have explained it here ; I told him Perrin hadn't complied with his contract ; his contract was to give me two notes of \$140 each, from November 8th, that I sent him the policies and two notes for him to sign, that he returned neither of the notes, but sent me back a note dated November 13, for \$168 ; that
30 this policy was not accepted, was not paid for, and was not in force ; he asked me what course to pursue ; I told him to make out his proofs ; I think I told him I would make out his proofs for him for the other two companies, but he didn't come to me to do it.

Q. Did he call afterwards ?

A. He called two or three times.

Q. At any time did he ever offer or tender you any money or premium ?

A. No, sir ; he never offered me anything till that note
40 came due, then he came in and offered to take it up, that is

for the other two policies ; he offered me his check for this note and I took it.

Q. Did he ever offer you any money for the premium on this policy ?

A. No, sir.

Q. Did Mr. Perrin ever call to see you ?

A. Yes.

Q. Before or after the fire ?

A. After the fire.

Q. Not before ?

A. I didn't see him from the time I sent the policies with 10 that letter till after the fire ; I didn't see him from November 6th till after the fire.

Q. What occurred when he did come ?

A. He wanted to know if I was going to beat him out of his insurance on this policy ; I told him I was not beating him at all ; the policy wasn't in force ; it had never been accepted ; he says if I bring you down the money to-morrow, will you accept it ? says I, certainly not ; but he didn't offer me any money ; never tendered me any money.

Q. Is that all that occurred between you and Mr. Perrin 20 in reference to money ?

A. That's all.

Cross-examined by Mr. Randolph :

Q. How do you happen to remember so exactly about the two \$140 notes ?

A. Because I keep a memorandum of every transaction I have ; I kept a memorandum of this transaction ; I presumed there would be some trouble about it, and I put 30 down everything, so it would be certain ; I made a memorandum the day after the fire—the 21st of November, 1872, and from time to time, as the thing progressed, I added to it. This (producing memorandum) is the memorandum.

Q. How much of that memorandum was made at the time ?

A. All of that ; but there is another one that was made afterwards—it was simply about the payment of the note.

Q. This memorandum was made when ?

A. On or about November 21st, 1872.

Q. *By Mr. Abbett, showing witness paper*—This is the other memorandum you spoke about?

A. Yes, that is it.

Q. Apart from this memorandum, have you a particular recollection of what was said and done between you and Mr. Perrin at the time those policies were ordered?

A. Yes, because I very seldom make such an arrangement, and for that reason it was impressed upon my mind.

10 Q. You made this memorandum after the fire?

A. Yes, about November 21, 1872.

Q. Do you think that when you talked with Mr. Perrin you specified exactly how much of the premium should be on one note and how much on the other?

A. Yes, \$140 each.

Q. Why do you say you seldom made an arrangement of that sort?

A. Because I don't average once a year I take notes for insurance.

20 Q. How do you generally get your premiums?

A. Cash.

Q. Prepaid on all the policies?

A. In most all cases.

Q. In half the cases do you get the premium in advance?

A. Notes or cash on delivery.

Q. Should you think you did in half the cases?

A. Yes, more than that.

Q. You have insured a good deal for Mr. Perrin before?

A. Yes.

30 Q. What sort of an arrangement have you with him before?

A. Notes in every instance I believe.

Q. Have the notes always been delivered on delivery of the policies?

A. I think that was the agreement.

Q. In your practice with him, have the notes always been received by you on the same day of the delivery of the policies?

A. No, sir.

40 Q. Within a week or two of that time?

A. Yes, within a few days.

Q. Have n't they run a fortnight over that time?

A. I couldn't say.

Q. In issuing policies for the Milville company, is this the only instance of your ever taking notes?

A. With one exception, I think it is.

Q. And in the other instances, have you always had the money paid on delivery of the policies?

A. Not on delivery but in a few days.

Q. What have you done if it was not delivered on delivery?

A. I have gone after the money.

Q. How soon did you go after the money?

A. Sometimes within a few days. I would state that I told Perrin the morning I was there, that I took the note individually and personally on my own responsibility.

Q. You have repeatedly issued policies for this company without taking the cash on the receipt of the policies?

A. Yes; where the policy was accepted I would let it go, and if the money wasn't paid within a reasonable time, I went after it.

Q. What did you consider a reasonable time?

A. That would depend upon the parties altogether.

Q. How long did you generally let a note run in issuing policies of the Milville company?

A. I couldn't say without referring to my books.

Q. Do you think you have ever let one run a month?

A. Oh, yes! Where the policy was accepted I have.

Q. Did you stipulate with Perrin in this agreement that the notes should be given by him the very day that he received the policies?

A. Yes; and dated of the date of the policy. They should be received on delivery of the policy. The notes should be given on the receipt of the policies, and dated from the date of the policy. That was the distinct agreement made.

Q. Hadn't you been in the habit, in your dealings with Perrin, of letting the notes run some time?

A. When I took notes from him; but they were always to be dated on the date of the policy.

Q. But you didn't get them on that day always?

A. I didn't always get them on delivery.

Q. Did you ever ask him for the money after sending him the policies?

A. No, sir.

Q. What did you do with the note?

A. Put it in the safe.

Q. Do you remember what answer you sent to Perrin?

A. I didn't send him any answer; I expected him to
10 come down every day; I waited for him to come down.

Q. You say Perrin asked you whether you would accept the money if he brought it in the next day, and you told him no?

A. Yes.

Q. Did you ever tell Mr. Collerd that same thing?

A. No, sir.

Q. *By Court*—Didn't you say a moment ago that Collerd said, "If I bring you the money to-morrow will you accept it"?

20 A. If I said Collerd I meant Perrin.

Q. Mr. Collerd testified that he told you that he was willing and ready to pay for that premium, and you said you were not willing to receive the money. Will you swear positive that that is not true?

A. I will swear that as long as I can stand up.

Q. Then you didn't tell Mr. Collerd that you would not take the money?

A. There never was any such question put to me by Mr. Collerd; Perrin was the only man that ever asked me in
30 reference to accepting the money for that policy after the fire; he asked me if I would accept it if he brought it in to me; I told him no—certainly not.

Q. You always made memorandum like this of little special agreements made by you. Did you always make memorandum of your agreements with Perrin?

A. I didn't say I always made memorandum. I say I always made memorandum when I imagined there would be any trouble. The day after the fire I thought there might be a trouble about this policy, therefore I made this
40 memorandum.

Q. By Court—As I understood Perrin's testimony it was to the effect that he was to pay the premium in six weeks, that is to give a note for six weeks or pay the cash within a month, or before the expiration of the month ?

A. His agreement with me was to give me two notes of \$140 each, one to run six weeks and the other two months, he said perhaps he could take one of them up and pay cash before it expired ; I says I will be very glad if you do ; he says perhaps I will have to extend one of them, and pay part of it on account ; well says I we'll see about that when it comes due. 10

Re-direct by Mr. Abbett :

Q. (Showing witness a letter), Is that a letter received by you from Perrin & Co. ?

A. Yes, that's the one I received November 5th.

Defendant offers the letter in evidence, dated Nov. 4th, 1872, and it was received, and is hereto annexed as Exhibit C.

Q. After you received this note you went up there ?

A. Yes, I told him I would not take notes of two and three months ; I made that memorandum on there at the time ; " six weeks \$140, two months \$140, total \$280, to be dated same date." 20

Q. How did you come to make that memorandum ?

A. To refresh my memory, I suppose. It was made at the time.

Q. Had you any authority from the Millville Company to take notes for them ?

A. No, sir ; I didn't take this for them. I assumed the liability myself if the policy was accepted. If I took notes for insurance I took them on my own responsibility, and am liable to the company for the amount. 30

Defendant offered in evidence a certified copy of the act of incorporation. The Laws of 1859, page 144, and the same was received.

Furman M. Mulford, recalled by defendants.

Q. (Showing witness a copy of by-laws). Is this a copy of the by-laws of this company?

A. Yes, sir.

Defendant offered it in evidence, and it was received, and is hereto annexed as Exhibit D.

Defendant rests, subject to the matter now left open in relation to the missing note or memorandum.

Raymond S. Perrin recalled by plaintiff.

10 *Q.* At the time of your contract with Buckley, that you have spoken of was an agreement made, as testified to by Buckley, that you should give two notes for \$140 each, one payable in six weeks, and the other in two months?

A. I was to give two notes, but the amount was not stated, as we had not agreed upon the amount, to a cent, of the premium.

Q. Was it specified that the two notes were to be equally divided?

20 *A.* No, sir; the idea was, that the premium was to be divided in two notes of equal amount, but the amount was not agreed upon, as we didn't know it.

A. When you went to see Buckley, after the fire, did you offer him a note?

30 *A.* Yes; I offered to settle with him in either way; I can't recollect the exact words I used; I asked Buckley if he would accept a settlement for that premium, and Buckley said that he wouldn't have anything to do with me about that policy; he cut me short; I couldn't argue with him; he refused to speak about it; I made a note out and put it in my pocket, and had it in my hand to give to him, if he required a settlement in that way; I had also the money, if he required the money; he refused to have anything to do with me about it, and of course I left him.

Q. In your previous dealings with Buckley, had you ever given him notes for premiums on the day you got the policies?

Mr. Abbett—Do you propose to refer to this company only?

Mr. Randolph—No.

Witness continued:

Buckley stated that he didn't take the notes for the company; he took them on his own responsibility.

Q. By Court—Was the date specified on which you should deliver these notes to Buckley?

A. No, sir; it was taken for granted about my giving the notes; I had given him dozens of notes, and paid them 10 all, previous to that; I paid him over two thousand dollars during the twelve months preceding that, all in notes; he would send in the policies, and, when I got ready, I would send him the notes; I always did within a couple of weeks from the time I received the policies.

Q. Was there an agreement as to what day the notes should bear date?

A. Yes, I believe we agreed upon the date of the policies, but I made no allowance for such a long time to elapse from the time of the date of the policies to the time they were 20 delivered; they were dated on the 8th and I got them on the 13th, and I thought I was justified in dating my notes on the 13th.

Q. In taking policies from Buckley, and paying for them by notes in your previous dealings with him, did you ever give him the notes on the day you got the policies?

A. Not that I remember.

Q. By Court—Do you know whether you did or not?

A. I don't think I did; I remember plenty of times I didn't, and I never remember having done so once.

Q. By Court—What was your agreement with Buck- 30 ley?

A. Our agreement at my office was six weeks and two months; that is for notes, and Buckley requested me, as a favor, to bring him in that six-weeks' note in money before the expiration of the month; I said I would do it if I could, and therefore I had the privilege of paying it in cash.

Q. By Court—When you said, before, you could pay cash before the expiration of the month, this is what you meant—“that you were to give two notes, one at six weeks and one at two months, and Buckley requested, as a favor, to bring in the six-weeks’ note before the month, if you could, and for that reason you had the privilege of paying it in cash.” Is that what you meant?

A. Yes, sir.

10 *Cross-examined :*

Q. You say you always sent the notes about two weeks after you got the policies?

A. No, sir; I said it never extended over that time. I often did it more promptly than that.

Q. Did you write that note dated November 14?

A. Yes, sir.

Q. That note says the notes are to be dated on the date of the policy?

20 *A.* Yes, sir.

Q. These notes you were to deliver were to be dated the date of the policies?

A. Yes, that was our agreement.

Q. And the note you sent of \$168 was not according to that date?

A. No, sir.

Q. That was not according to the agreement?

A. It was what I considered fair and just. I thought I had a right to date it when I received the policy.

30 *Q.* What made you think you were authorized to repudiate that part of the agreement as to the date of the notes?

A. The fact that Buckley didn’t deliver the policies within a reasonable time from their date.

Q. He delivered it on the 13th?

A. Yes.

Q. Your application was when?

A. On the 4th.

Q. He came up there on the 6th?

A. Yes.

40 *Q.* And because he didn’t deliver it till a week

afterwards, you thought you had a right to repudiate that part of the agreement ?

A. Yes.

Q. Was there any other agreement made between you and Buckley after this one ?

A. I didn't see Buckley after that till after the fire.

Q. There was no writing passed between you in reference to that subject ?

A. No, sir.

Q. You didn't deliver two notes of equal amount for the 10 whole of the five thousand dollar policies ?

A. No, sir.

Q. You say the agreement was modified, so as to make it a six weeks and two months note ?

A. Yes, sir.

Q. Then you took it upon yourself to send down one note for \$168 for the premium for the other two policies ?

A. Yes, sir.

Q. You didn't send any note for the other ?

A. No, sir.

Q. But you did send this memorandum, saying you would 20 make inquiries about the standing of this company ?

A. I sent him a letter to that effect.

Q. And you never afterwards sent him any other memorandum about what you decided upon the subject ?

A. No, sir.

Q. You say you had a note in your pocket, and the cash. Did you take out the note or cash ?

A. I had the note in my hand.

Q. What kind of a note was it ?

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A. Six weeks after date I promise to pay, for value received, \$112, I believe ; that is the premium on the Millville company ; I believe the note was dated on the 13th of the month ; I considered I owed the money from the time I got the policy.

Q. To whose order was it ?

A. To Mr. Buckley's order.

Q. It was not dated on the date of the policy ?

A. It could not have been if it was dated on the 13th.

40

Q. Did you offer Mr. Buckley this note when he said he wouldn't have anything to do with it?

A. I offered to settle it with him; I didn't make him a tender of either note or money; I asked him if he would take payment for that policy.

Q. Did you ever send word to the company offering them the money or the note?

A. No, sir.

Case closed, subject to the one point reserved by defence.

10 *DEC. 9TH.* We sent for the witness last night; proper fees were paid him, and he was subpoenaed; but, in consequence of sickness in his family, he has not come. Seven dollars was paid him. We have his letter here stating that he didn't receive that memorandum in question at the time, and had no recollection of it.

Mr. Abbett:—We desire to make a formal offer, to prove by Mr. Buckley what was on that memorandum, that the Court may overrule it, and give us the benefit of an exception.

20 The Court overruled the offer.

To this ruling of the Court a bill of exceptions is prayed by the defendant, and is allowed, and sealed accordingly.

J. D. BEDLE, [L.S.]

Mr. Abbett:—We renew our motion to non-suit the plaintiff on the same grounds as before.

The Court refused to non-suit the plaintiff.

To this ruling of the Court, refusing to grant a non-suit, a bill of exceptions is prayed by the defendant, and is allowed, and sealed accordingly.

30

J. D. BEDLE, [L.S.]

Raymond S. Perrin, called by the Court.

Q. You said that you turned the policies, immediately after the fire, over to Mr. Collerd?

A. Yes; not immediately after the fire, but immediately after receiving them. He had them before the fire.

Q. What time did you turn them over?

A. About half an hour after they were handed to me by Buckley's boy. I turned them over to J. A. Huson, Mr. Collerd's foreman in the lumber-yard. 10

Q. For what purpose?

A. To fulfill an agreement I had with Mr. Collerd to procure this insurance.

Q. What did Huson do with them?

A. He locked them up in a safe till Mr. Collerd arrived.

Q. By Mr. Abbett—What did you say to Huson?

A. I believe I asked him to give those policies to Mr. Collerd as soon as he came in.

Q. Mr. Abbett—Is that all you said?

A. I don't think I said anything else.

Q. Mr. Abbett—Did you send any word to the company, 20 or Buckley, that you had done that?

A. To neither Buckley nor the company.

Whereupon the judge charged the jury as follows :

GENTLEMEN OF THE JURY : There are several very important questions of law in this case, but the Court will leave the questions of fact to you and the case in such a shape as that it may be easily reviewed hereafter. Some of the questions are of such a character as that they ought not to be 30 regarded as definitely settled at the circuit, as, for instance, a question arises on the face of this policy. It was held in a case in the Supreme Court that where the policy acknowledged the receipt of the premium, although there was a clause in the policy, that the policy should not have effect till the payment of the premium, yet that the acknowledgment of the receipt in the policy was conclusive so far as the liability under the policy was concerned. Now, this case does not quite come within that ruling, for the policy on its 40

face in terms don't acknowledge the receipt of the money. It would be presumed from the fact of the delivery that the money was paid when the delivery was complete, and, from the words, "the company in consideration of do insure." If the delivery was complete it would be assumed in law that the consideration was paid ; but, at any rate, the policy on its face does not acknowledge the receipt of the money, and therefore, there is a very serious legal question as to the effect of another clause in such a policy that it should

10 not have effect till the payment of the premium ; but the Court assume that there is no difficulty on that part of the case, and therefore, will leave to you only two questions, the first of which is as to Mr. Collerd being a *bona fide* holder of this policy. As the testimony stands, it was known by Mr. Buckley that the insurance was to be effected for Mr. Collerd and the policy is made out in the name of Collerd. It appears from the testimony of Perrin that within a half hour after the receipt of the policy by him, it was delivered over to Huson, the agent of Collerd, for Collerd.

20 Now it is claimed by the company that this policy was not actually delivered to Perrin, and therefore, it could have no effect, and that if so it could not be treated as delivered as against Collard. As the case stands upon the testimony of Perrin it appears that this one with two other policies were sent by Buckley to Perrin by a boy with a request that he return two notes. The testimony all agrees that this insurance was to be effected in consideration of two notes, and at least for six weeks. Perrin when recalled upon the stand says one was to be six weeks and the

30 other two months, and that Buckley wished him to cash the six week's note before it came due, say within a month, if he could, and Perrin said he would see about it or do the best he could, or something to that effect ; I don't recollect the exact expression, but that is about the amount of it. The agreement, at any rate, was that the insurance was to be effected for two notes for a certain rate, and the amount to be divided. Buckley, by a boy, sent the three policies to Perrin, at his office, with a request that he return the two notes ; Perrin retained the three policies, and instead of

40 sending either of the notes, sent back one note for the two

policies, leaving this without the note, and sending, as he says, this word—"I remember writing a letter to Buckley that I would look into the standing of the companies, and after I was satisfied about it would send him a settlement." Now, if the case stands merely on the testimony of Perrin, and Collerd had knowledge of that arrangement before the fire, then there would be, strictly speaking, no delivery of the policy, for the meaning of that, in law, the Court charge you to be this: that Perrin was withholding the acceptance of that policy till he was satisfied as to the standing of the company, and that he was not liable to the company for the consideration till the acceptance of the policy. He withholds the note for that policy, he retains it to inquire into the standing of the company, and "promises a settlement if he was satisfied about it; he was withholding the acceptance of that policy, so that he was not liable to the company at that time, strictly speaking, for the money or the note by reason of his withholding the acceptance, and if Collerd, before the fire, had knowledge of that he would be bound by it. The same rule that would affect Perrin would affect Collerd, if he had such knowledge before the fire. 10 20

Now then, this was some few days before the fire—I think this was on the 13th, as the fire took place on the 20th. A week before the fire, Perrin sends this word about the withholding of the policy in effect, that he would look into the standing of the company, and, after satisfied, would send him a settlement. Buckley sends no word back, and you, therefore, would treat Buckley as acquiescing in that arrangement, acquiescing in the suggestion of Perrin, that he would look into the standing of the company. The legal effect of that was, that the technical title did not pass, but that arrangement left the paper in the actual custody of Perrin, subject to Perrin looking into it, and sending a settlement if he was satisfied; although the title didn't technically pass. 30

Now, if that policy had been in the name of Perrin, that condition of things would be such as that Perrin could not recover against the company, because there was no technical acceptance of the policy; and, if Collerd knew of that condition of things, he could not recover either. It is 40

claimed that the insurance was to be effected for the benefit of Collerd; it was Collerd's property, and Perrin was the tenant of Collerd, and Perrin was to effect the insurance and turn the policies over to Collerd. It looks like one of those arrangements that are made sometimes between holders of a mortgage and the mortgagor of the property, sometimes those things are done by the policy being effected in the name of the mortgagor, and the policy being turned over to the mortgagee. In this case Perrin was the tenant,

10 and he was to turn the policies over to Collerd; it was the duty of Perrin to effect this insurance, and effect it for the benefit of Collerd; and Buckley knew that the insurance was to be effected for Collerd. You see it was important to Collerd to have his property insured, and it is very important to the owner of the property to know how far he is bound by any private arrangement between the man who is to insure his property for his benefit and the agent of the insurance company who effects the insurance; it is important for the owner of the

20 property to know whether he is to look behind the face of the policy or not. You go to a broker's office—an independent insurance broker—and you get him to insure you, and he brings you a policy, gets it from some company that he is not the technical agent for, but is your agent, he brings you the policy and you pay him for the policy, he has got it, and it is regular on its face; it is a very important question to know whether the company can set up that there was a private arrangement between that man and the company, that the technical title to that policy should

30 not pass till the private arrangement was carried out between the man and the company.

Now, the Court charge you, therefore, that if Collerd knew of this arrangement between Perrin and Buckley, that the title of the policy did not pass, that the contract was not accepted; but if he did not know it, and before the fire these policies were delivered over to Collerd in furtherance of an arrangement between Collerd and Perrin, Collerd not knowing of the arrangement between Buckley and Perrin, then the company would be bound. If Collerd

40 knew of the arrangement sworn to by Perrin, he would be

bound by it, and the verdict should be for the company ; if he didn't know of it, and the policy was turned over in good faith on the part of Collerd, he supposing that that was an insurance without condition, and the policy had been accepted by him before the fire, in innocence on the part of Collerd, then that policy would be good as against the company, notwithstanding the arrangement between Perrin and Buckley, as already explained.

That is one question of fact the court leaves to you, and your verdict must be for the defendant, if not *bona fide* in the sense stated on the part of Collerd ; if otherwise, then you find for plaintiff. 10

Now, it seems after the fire that Collerd did know of this arrangement—after the fire—for he says he went to Buckley and made a tender. When he found out the condition of things the court charge you that the law would require of him that he go and make a compliance—he, or somebody for him—when he found out what it was, before he could commence his suit. There is a little difficulty in the testimony as to the character of this tender afterwards, although not very much ; the rule of law would be this : that either Collerd, or some person for him, would be obliged, within a reasonable time after the fire, to make a tender of a note, necessary to cover the premium, a proper note, or of the money. Perrin says he went there ready, that he had a note drawn, and that he was ready with the cash. Collerd also swears in regard to his going there and proffering himself ready or to that effect. Buckley says there was no actual tender of note or money, but he also says that Perrin said to him “ if I bring you the money to-morrow will you accept it,” and he said he would not. It is very evident that after the fire Buckley didn't mean to recognize this policy in any way. It is not necessary that there should be an actual visible presentation of the note and money ; all that is necessary is that the party should go there actually ready to comply with the agreement—that is, to pay the premium, in note or money, according to contract, so that if the party is willing to take it he is willing and able to comply ; but if he will not recognize the right to make the tender at all, the actual production of the money or note is not necessary. All 20 30 40

that is required is that you should be satisfied that the party or some person for him, was ready and willing at that time to comply, and offered to do so. If the other side is unwilling to accept it, the actual presentation of the money or note is dispensed with—it is not necessary.

These two questions are the only ones submitted to you because there is no controversy about the rest of the case at all. If you find these two questions in favor of the plaintiff, then your verdict would be for the total amount of the policy with interest thereon. If you find the first proposition in favor of the defendant, then your verdict will be for the defendant. If you find no tender your verdict would be for defendant. If you find them both for the plaintiff your verdict must be for the plaintiff, and that verdict would be two thousand dollars with interest, less premium and interest. Counsel will agree as to the interest.

I would say to counsel that the mode in which this case is presented to the jury involves all the other questions that are raised here as to the character of the policy and the want of compliance with its conditions. I desire to be understood distinctly as charging for a verdict for plaintiff provided they find those two issues for plaintiff.

Defendants counsel asks the Court to charge that a tender to Buckley after the fire was not sufficient.

The defendant thereupon made the following exceptions to the charge of the Judge.

30 FIRST.—It expects to that part of the charge, wherein the Judge says: “but if he (the plaintiff), did not know it (the arrangement between Buckley and Perrin), and before the fire, these policies were delivered over to Collerd, in pursuance of an arrangement between Collerd and Perrin, Collerd not knowing to the arrangement between Buckley and Perrin, then the company would be bound.”

SECOND.—It expects to that part of the charge in relation to the tender, made within a reasonable time after the fire, wherein the Judge says: “all that is necessary is, that the

party should go there actually ready to comply with the agreement; that is, to pay the premium on note or money according to contract, so that if the party is willing to take it, he is willing and able to comply; but if he will not recognize the right to make the tender at all, the actual production of the money or note is not necessary. All that is required is, that you should be satisfied that the party or some person for him, was ready and willing at that time to comply, and offered to do so. If the other side is unwilling to accept it, the actual presentation of the money or note is 10 dispensed with, it is not necessary."

THIRD.—It excepts to that part of the charge wherein the judge says: "If you find these two questions in favor of the plaintiff, then your verdict would be for the total amount of the policy with interest, deducting the premium with interest thereon."

FOURTH.—It excepts to that part of the charge of the judge, when he says: "I desire to be understood distinctly, as charging for a verdict for plaintiff, provided you find those two issues for plaintiff." 20

And each of the said exceptions to the charge of the judge are allowed, and sealed accordingly.

J. D. BEDLE. [L. s.]

The defendant requested the judge to charge the jury, that a tender to Buckley after the fire was not sufficient. The judge declined so to charge.

To which ruling a bill of exceptions is prayed by the defendant, and is allowed, and sealed accordingly.

J. D. BEDLE. [L. s.]

The Court—These exceptions to my charge, and refusal to charge, are all subject to whatever I said. 30

J. D. BEDLE.

Whereupon the jury found for the plaintiff a verdict for the sum of

NEW JERSEY COURT OF ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CAUSES.

ABRAHAM COLLERD, <i>Defendant in error,</i> <i>vs.</i> THE MILLVILLE MUTUAL MARINE AND FIRE INSURANCE COMPANY, <i>Plaintiff in error.</i>	}	<i>In Assumpsit.</i> <i>Assignment of</i> <i>Errors.</i>
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10 And the said The Millville Mutual Marine and Fire Insurance Company, the plaintiff in error, by James H. Nixon, its attorney, comes and says: That on the record and proceedings aforesaid there is manifest error in this—to wit:

1. Because the justice before whom the trial of said cause took place permitted the defendant in error to show upon said trial by Abraham Collerd a tender of the money for the premium mentioned in the policy to Buckley, the agent of the company, after the loss occurred, although the plaintiff in error objected to the admission of said testimony, on the
 20 ground that what occurred between the witness and Buckley, after the fire, could not charge the company with the contract of insurance.

2. Because the said justice refused the motion for a non suit made by the plaintiff in error, when plaintiff (defendant in error) closed his case at said trial, which motion was made upon the grounds that there was no acceptance of the policy by the plaintiff (defendant in error) or his agent. That the delivery was conditional, the plaintiff or his agent to give notes for the premium on the delivery of the policy. which condition was not complied with, and the notes not
 30 given, and no payment made for the premium either in cash

or note, and no tender of any until after the loss. That the company being a mutual company, according to its charter, plaintiff must pay either notes or money, as premium, to make a valid policy, and that he did neither. That the policy on its face did not create any liability without payment of the premium. That Buckley had no authority to deliver the policy without payment of the premium, and that the plaintiff had notice thereof by the policy itself.

3. Because the said justice refused to allow the plaintiff in error to prove, by Buckley, what was on the memorandum sent by Perrin to Buckley, with the notes for the premium on two policies accepted by Perrin and not in this suit, the said memorandum having been lost. 10

4. Because the said justice refused when the case was closed by both sides to grant the defendants (plaintiff in error) motion for non suit, made on the same grounds as before—viz.: That there was no acceptance of the policy by the plaintiff (defendant in error) or his agent. That the delivery was conditional, the plaintiff or his agent to give notes for the premium on the delivery of the policy, which condition was not complied with, and the notes not given, and no payment made for the premium either in cash or note, and no tender of any until after the loss. That the company being a mutual company, according to its charter, plaintiff must pay either notes or money, as premium, to make a valid policy, and that he did neither. That the policy on its face did not create any liability without payment of the premium. That Buckley had no authority to deliver the policy without payment of the premium, and that the plaintiff had notice thereof by the policy itself. 20

5. Because the said justice in his charge to the jury 30 charged and instructed them as follows: "That if he (defendant in error) did not know it (the arrangement between Buckley and Perrin), and before the fire these policies were delivered over to Collerd and Perrin, Collerd not knowing of the arrangement between Buckley and Perrin, then the company would be bound."

6. Because the said justice in his charge to the jury charged and instructed them as follows: "All that is necessary is that the party should go there actually ready to comply with the agreement, that is to pay the premium in note or money, according to contract, so that if the party is willing to take it, he is willing and able to comply; but, if he will not recognize the right to make the tender at all, the actual production of the money or note is not necessary. All that is required is that you should be satisfied that the party, or some person for him, was ready and willing at that time to comply, and offered to do so. If the other side is unwilling to accept it, the actual presentation of the money or note is dispensed with, it is not necessary."

7. Because the said justice in his charge to the jury charged and instructed them as follows: "If you find these two questions (the question as to Collerd being a *bona fide* holder of the policy, and the question as to tender or readiness to the tender after the fire as stated in the charge,) in favor of plaintiff, then your verdict would be for the total amount of the policy, with interest, deducting premium and interest thereon."

8. Because the said justice in his charge to the jury charged and instructed them as follows: "I desire to be understood, distinctly, as charging for a verdict for plaintiff, provided you find those two issues for plaintiff" (these two issues being whether Collerd was a *bona fide* holder of the policy, and whether he made or was ready to make a tender after the fire as stated in the charge).

9. Because the said justice refused to charge the jury "that a tender to Buckley, after the fire, was not sufficient," although requested so to do by the defendant (the plaintiff in error).

10. And because there is also error in this that the judgment aforesaid was given for the defendant in error, and against the plaintiff in error, whereas by the law of the land said judgment ought to have been given for and not against the plaintiff in error.

And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for other errors in said record and proceedings, may be reversed, annulled, and altogether holden for naught, and that the said plaintiff in error may be restored in all things which it has lost by occasion of the said judgment.

JAMES H. NIXON,
Atty of Plff in error.

I, Benjamin F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true 10
copy of the bill of exceptions filed in the above stated cause,
as the same remains on file in my office.

In testimony whereof, I hereto set my hand and
[L. S.] the seal of the said court, at Trenton, this seventh
day of May, A. D. eighteen hundred and seventy-
four.

BENJAMIN F. LEE,
Clerk.

Exhibits annexed to bill of exceptions.

EXHIBIT A.

No. 2,719.

STOCK POLICY.

\$2,000.

THE MILLVILLE MUTUAL MARINE AND FIRE INSURANCE
COMPANY OF MILLVILLE, N. J.

In consideration of one hundred and twelve dollars, do insure Abraham Collerd, against loss or damage by fire, to the amount of two thousand dollars : \$1,000 on his 3-story frame, composition roof, planing and moulding mill, 50x50 feet, including the brick boiler house attached on north side, 10 30x15 feet, and the one-story frame shed attached on east side, 50x25 feet, situate on the north side of Fourteenth street, commencing 100 feet east of Henderson street, in Jersey City, N. J.

\$1,000 on his steam engine, boiler and their appurtenances : steam pump, machines, machinery, shafting, belting, pullies, hangers, steam pipes, tools, implements and fixtures, all contained in said mill and boiler house.

Other insurance permitted without notice until required.

And the said company hereby agrees to make good unto 20 the said assured his executors, administrators and assigns, all such immediate loss or damage, not exceeding in amount the sum or sums insured, as above specified, nor the interest of the assured in the property, except as herein provided, as shall happen by fire to the property so specified, from the eighth day of November, one thousand eight hundred and seventy-two, at twelve o'clock at noon, to the eighth day of May, one thousand eight hundred and seventy-three, at twelve o'clock at noon ; the amount of loss or damage to be 30 estimated according to the actual cash value of the property at the time of the loss, and to be paid sixty days after due notice and proofs of the same shall have been made by the assured and received at this office, in accordance with the terms and provisions of this policy, unless the property be replaced, or the company shall have given notice of their intention to rebuild or repair the damaged premises.

1. If an application, survey, plan or description of the property herein insured is referred to in this policy, such application, survey, plan or description shall be considered a part of this contract, and a warranty by the assured; and any false representation by the assured of the condition, situation or occupancy of the property, or any omission to make known every fact material to the risk, or an over-valuation, or any misrepresentation whatever, either in a written application or otherwise; or if the assured shall have or shall hereafter make any other insurance on the 10 property hereby insured, or any part thereof, without the consent of the company written hereon, or if the above-mentioned premises shall be occupied or used so as to increase the risk, or become vacant or unoccupied, and so remain for more than thirty days, without notice to, and consent of, this company in writing, or the risk be increased by the erection or occupation of neighboring buildings, or by any means whatever within the control of the assured, without the assent of this company endorsed hereon; or if it be a manufacturing establishment running in whole or in 20 part over or extra time, or running at night, or if it shall cease to be operated, without special agreement indorsed on this policy; or if the property be sold, or transferred, or any change take place in title or possession, whether by legal process, or judicial decree, or voluntary transfer, or conveyance; or if the policy shall be assigned before a loss, without the consent of the company indorsed hereon; or if the interest of the assured in the property, whether as owner, trustee, consignee, factor, agent, mortgagee, lessee, or otherwise, be not truly stated in this policy; or if the 30 assured shall keep gunpowder, fireworks, nitro-glycerine, phosphorus, saltpetre, nitrate of soda, petroleum, naphtha, gasoline, benzine, benzole or benzine varnish, or keep or use camphene, spirit gas, or any burning fluid or chemical oils, without written permission in this policy, then, and in every such case, this policy shall be void.

2. This insurance does not apply to or cover jewels, plate, watches, musical or scientific instruments, (piano-fortes in dwellings excepted), ornaments, medals, patterns, printed 40

music, printed books, engravings, paintings, picture frames, sculpture, casts, models or curiosities, unless particularly specified in this policy. This company shall not be liable by virtue of this policy, or any renewal thereof, until the premium therefor be actually paid to the company, or its duly authorized agent; nor for loss by theft at or after a fire; nor for money or bullion, bills, notes, accounts, deeds, evidences of debt, or securities of property of any kind; nor for any loss or damage by fire caused by means of an
 10 invasion, insurrection, riot, civil commotion, or military, or usurped power; nor for any loss in buildings unprovided with good and substantial stone or brick chimneys, the absence of which has been the cause of the fire; nor in consequence of any neglect or deviation from the laws or regulations of police, where such exist; nor for any loss caused by the explosion of gunpowder, or any explosive substance; nor by lightning, or explosions of any kind, unless fire ensues, and then for the loss or damage by fire only, which loss shall be determined by the value of the damaged property after the casualty by explosion or
 20 lightning.

3. If a building shall fall, except as the result of a fire, all insurance by this company on it or its contents shall immediately cease and determine.

4. If the interest of the assured in the property be any other than the entire, unconditional and sole ownership of the property, for the use and benefit of the assured, or if the building insured stands on leased ground, it must be so represented to the company, and so expressed in the written
 30 part of this policy, otherwise the policy shall be void. When property has been sold and delivered, or otherwise disposed of, so that all interest or liability on the part of the assured herein named has ceased, this insurance on such property shall immediately terminate. Goods held on storage must be separately and specifically insured.

5. If, during this insurance, the above-mentioned premises shall be used for any trade, business or vocation, or for

storing, using or vending therein any of the articles, goods or merchandise denominated hazardous, or extra hazardous, or specially hazardous in the second class of hazards printed on the back of this policy; or if the occupation of such premises be changed from one of the class denominated extra hazardous or specially hazardous to that of another of the same class, except as herein specially agreed to in writing upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied or used, this policy shall cease, and be of no force or effect.

6. The best endeavors of the assured shall be used in ¹⁰ saving and protecting the property from damage at and after the fire; and in case of failure so to do, this company will not be liable for damage caused by such failure; and there can be no abandonment to the company of the property insured.

The use of general terms, or anything less than a distinct, specific agreement, clearly expressed and indorsed on this policy, shall not be construed as a waiver of any printed or written condition or restriction therein.

7. In case of any other insurance upon the property ²⁰ hereby insured, whether made prior or subsequent to the date of this policy, the assured shall be entitled to recover of this company no greater proportion of the loss sustained than the sum hereby insured bears to the whole amount insured thereon; and it is hereby declared and agreed that in case of the assured holding any other policy in this or any other company on the property insured, subject to the conditions of average, this policy shall be subject to average in like manner.

Re-insurance, in case of loss, to be settled in proportion ³⁰ as the sum re-insured shall bear to the whole sum covered by the re-insured company.

8. This insurance may be terminated at any time at the request of the assured, in which case the company shall retain only the customary short rates for the time the policy has been in force. The insurance may also be terminated

at any time at the option of the company, on giving notice to that effect, and refunding a ratable proportion of the premium for the unexpired term of the policy.

9. Persons sustaining loss or damage by fire, shall forthwith give notice of said loss to the company, and as soon thereafter as possible render a particular account of such loss, signed and sworn to by them, stating whether any and what other insurance has been made on the same property, 10 giving copies of the written portion of all policies thereon, also the actual cash value of the property and their interest therein, for what purpose and by whom the building insured or containing the property insured, and the several parts thereof, were used at the time of the loss, when and how the fire originated; and shall also produce a certificate from two respectable persons contiguous to the place of the fire, and also one under the hand and seal of a magistrate or notary public, (nearest to the place of the fire, not concerned in the loss as a creditor or otherwise, nor related to the 20 assured,) stating that they have examined the circumstances attending the loss, know the character and circumstances of the assured, and verily believe that the assured has, without fraud, sustained loss on the property insured to the amount which such persons, magistrate or notary public, shall certify. The assured shall, if required, submit to an examination or examinations, under oath, by any person appointed by the company, and subscribe to such examinations when reduced to writing, and shall also produce their books of account and other vouchers and exhibit the same for examination at 30 the office of the company, and permit extracts and copies thereof to be made; the assured shall also produce certified copies of all bills and invoices, the original of which have been lost, and shall exhibit all that remains of the property which was covered by this policy, damaged or not damaged, for examination, to any person or persons named by the company.

When personal property is damaged, the assured shall forthwith cause it to be put in order, assorting and arranging the various articles according to their kinds, separating 40 the damaged from the undamaged, and shall cause an in-

ventory to be made, and furnished to the company, of the whole, naming the quantity, quality, and cost of each article. The amount of sound value and of damage shall then be ascertained by appraisal of each article by competent persons, (not interested in the loss as creditors or otherwise, nor related to the assured or sufferers,) to be mutually appointed by the assured and the company; their report, in writing, to be made under oath before any magistrate or other properly commissioned person; one half of the appraisers' fees to be paid by the assured. The company 10 reserves the right to take the whole or any part of the articles at their appraised value; and until such proofs, declarations, and certificates are produced, and examinations and appraisals permitted by the claimant, the loss shall not be payable.

In case of loss on property held in trust, or on commission, or if the interest of the assured be other than the entire and sole ownership, the names of the respective owners shall be set forth, together with their respective interest therein. If this policy is made payable, in case of loss, to a third party, or held as collateral security, the proofs of loss shall 20 be made by the party originally insured, unless there has been an actual sale of the property insured. All fraud or attempt at fraud, by false swearing or otherwise, shall cause a forfeiture of all claims on this company under this policy.

But provided, in case differences shall arise, touching any loss or damage after proof thereof has been received in due form, the matter shall, at the written request of either party, be submitted to impartial arbitrators, whose award in writing shall be binding on the parties, as to the amount of such loss or damage, but shall not decide the liability of the com- 30 pany under this policy; and, provided further, that it shall be optional with the company to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, giving notice of their intention so to do within sixty days after receipt of the proofs herein required; and in case this company elect to rebuild, the assured shall, if required, furnish plan and specifications of the buildings destroyed.

The cash value of property destroyed or damaged by fire 40

shall in no case exceed what would be the cost to the assured, at the time of the fire, of replacing the same; and in case of the depreciation of such property, from use or otherwise, a suitable deduction from the cash cost of replacing shall be made, to ascertain the actual cash value.

10. This insurance, the risk not being changed, may be continued for such further time as shall be agreed on, provided the premium therefor is paid and indorsed on this policy, or a receipt given for the same, and it shall be considered as continued under the original representation, and for the original amounts and divisions, unless otherwise specified in writing; but in case there shall have been any change in the risk, either within itself or by neighboring buildings, not made known to the company by the assured at time of renewal, this policy and renewal shall be void.

11. It is a part of this contract that any person or persons, other than the assured, who may have procured this insurance to be taken by this company, shall be deemed to be the agent or agents of the assured named in this policy, and not of this company under any circumstances whatever, or in any transaction relating to this insurance, and if the premium on this policy shall be paid to any person or persons, other than the duly appointed and authorized agent of this company, such payment shall be at the sole risk of the assured.

12. It is furthermore hereby expressly provided and mutually agreed, that no suit or action against this company, for the recovery of any claim by virtue of this policy, shall be sustainable in any court of law or chancery, until after an award shall have been obtained, fixing the amount of such claim in the manner above provided, nor unless such suit or action shall be commenced within twelve months next after the loss shall occur; and should any suit or action be commenced against this company after the expiration of the aforesaid twelve months, the lapse of time shall be taken and deemed as conclusive evidence against the validity of

such claim, any statute of limitation to the contrary notwithstanding.

Gas—The generating or evaporating within the building or contiguous thereto of any substance for a burning gas, or the use of gasoline for lighting, is prohibited under this policy, unless permitted in writing hereon; kerosene oil, however, may be used for lights in dwellings, stores, churches and school houses, and kept for sale in stores in quantities not exceeding two barrels, to be drawn by daylight only. 10

Fences and other yard fixtures, also store furniture and fixtures, also plate glass, doors and windows, when the plates are of the dimension of three square feet or more, are not insured under the within policy, unless separately and specifically mentioned.

Builders' Risk—The working of carpenters, roofers, tin-smiths, gas-fitters, plumbers, or other mechanics, in building, altering, or repairing the premises named in this policy, will vitiate the same, unless permission for such work be indorsed in writing hereon, except in dwelling-houses only, where five days are allowed in any one year for incidental repairs 20 without notice or indorsement. Fresco work, or gilding on walls or ceilings is not covered by insurance on the building, but may be separately insured.

And it is hereby understood and agreed by and between this company and the assured, that this policy is made and accepted in reference to the foregoing terms and conditions, and to the classes of hazards and memoranda printed on the back of this policy, which are hereby declared to be a part of this contract, and are to be used and resorted to in order to determine the rights and obligations of the parties hereto, 30 in all cases not herein otherwise specially provided for in writing.

IN WITNESS WHEREOF, The Millville Mutual Marine and Fire Insurance Company have caused these presents to be signed by their president, and attested by their secretary, in Millville, N. J. But this policy shall not be valid unless countersigned by the duly authorized agent of The Millville

Mutual Marine and Fire Insurance Company, at Jersey City, N. J.

N. STRATTON, *President.*

S. F. FRIES, *Secretary.*

Countersigned at Jersey City, N. J., this eighth day of November, 1872.

WM. W. BUCKLEY, *Agent.*

(ENDORSEMENT.)

Make your check payable to the order of the Company.

This policy expires May 8th, 1873. No. 2719. Millville

10 Mutual Marine and Fire Insurance Company, Millville, N. J.
Abraham Collard, 14th street, Jersey City.

Amount Insured.....\$2,000 00

Premium.....\$112 00

Policy and Survey.....

\$112 00

WM. W. BUCKLEY, *Agent.*

EXHIBIT "B."

\$168.00

NEW YORK, NOVEMBER 13th, 1872.

Two months after date we promise to pay to the order of
W. W. Buckley, Esq., one hundred and sixty-eight $\frac{00}{100}$
dollars at Bank of the Metropolis, New York, value received.

PERRIN & CO.

No. Due Jan. 16, 1873.

EXHIBIT "C."

WM. H. BUCKLEY, Esq.

Dear Sir—I wish to effect \$5,000 insurance on my mill 10
for six months, in favor of Mr. Collerd, divided in at least
three companies. If you will divide the premium in two
parts and accept our notes for the same, payable at two and
three months from date of policy, I think we can make a
trade.

Yours, respectfully,

PERRIN & CO.

J. C., 4|11|'72.

EXHIBIT "D."

BY-LAWS OF THE MILLVILLE MUTUAL MARINE AND FIRE
INSURANCE COMPANY.

Section 1. The annual election shall be held on the first Monday of May ; special meetings of the company may be called by the President upon the application of three members.

10 Sec. 2. The Directors shall organize within five days of their election, and in addition to the president, secretary and treasurer, they shall elect from their own number an executive committee of four members. All the officers and agents of the company shall be liable to removal for misconduct.

Sec. 3. The president shall preside at all meetings of the board of directors, and shall be ex-officio a member of the executive committee. In his absence all the powers and duties of the office may be discharged by a president appointed *pro tempore*.

20 Sec. 4. The secretary shall keep the books and accounts of the company, under the direction of the executive committee. He shall prepare statements of the business to be laid before the board at their stated meetings, and an annual statement to be laid before the board at the meeting next preceeding the annual election. He shall give notice of all meetings of the company and of the directors, and keep minutes of the proceedings and record them. For the faithful performance of his duties, he shall give the directors a penal bond in the sum of one thousand dollars, with two satisfactory sureties.

30 Sec. 5. The executive committee shall meet weekly, and they, or a majority of them, shall receive and act upon all applications for insurance. They shall make such general regulations respecting the business as may seem to them expedient, and report the same to the next stated meetings of the directors. They shall weekly inspect the books, direct all investments and regulate the custody of the notes, bills,

bonds, contracts or other securities of the company, in such manner as is prescribed in the charter.

Sec. 6. All moneys deposited in bank by the executive committee shall be placed to the credit of the company. All drafts for the payment of money, shall be signed by the president and secretary.

Sec. 7. The board of directors shall meet on the second Monday of each alternate month, and the order of the business shall be as follows :

- I. Reading of the minutes of last meeting. 10
- II. Reading of the monthly statement of the secretary.
- III. Reports from executive committee and from special committee.
- IV. Deferred business.
- V. New business.

Special meetings of the board shall be called by the president at the request of two directors.

Sec. 8. The fees of the secretary shall be as follows, viz. :
For every policy issued, one dollar. For every renewal, endorsement or transfer of a policy, fifty cents, to be paid 20
by applicant. For noticing and attending the meetings of the company and of the directors, one dollar for each meeting, to be paid by the company.

Sec. 9. The directors and such other persons as they may appoint shall act as surveyors for the company. They shall receive one dollar for each survey, and twenty cents for each mile traveled from his residence to the place of survey, to be paid by the applicant. The surveyors shall report the size, tonnage and age of vessels to be insured, their value and condition, together with all information of importance 30
to the board.

Sec. 10. All persons obtaining a policy for the insurance of any vessel or part thereof, will be required to pay fifty per cent. the amount of the premium note in cash each year, so long as the vessel or part thereof shall continue insured, and any person neglecting to pay such annual payment at or before the expiration of each year, shall forfeit all right and title in said policy. But should no loss occur to the insured within thirty days from such expiration, the 40

insured may continue said policy by paying the annual premium.

Sec. 11. In case of marine losses sufficient to justify an assessment of marine premium notes, all such notes in possession of the company will be taxed, except in case the person insured has notified the company in writing of his intention to discontinue his policy, in which case the note will not be taxed for any losses that may occur after the expiration of the time set for the policy to terminate.

- 10 Sec. 12. The company may reserve to themselves the right at any time to revoke any marine policy when, in the judgment of the directors, an equitable regard for the interest of all concerned may justify it, by giving five days' notice to the insured, or his, her or their representative, and also surrendering the premium note and refunding back such portion of the cash paid as may be equivalent to the unexpired period of the policy.

- 20 Sec. 13. All policies on vessels or cargoes shall expire at twelve o'clock, noon, of the day to which the policy extends.

Sec. 14. The directors of said company may cause themselves to be re-insured, when deemed expedient, against any risk or risks upon which they have made or may make insurance.

- 30 Sec. 15. All accounts of marine and fire insurances shall be kept separate and distinct from each other, and all moneys paid for marine policies shall be appropriated only for the benefit of such as insure against losses or damages to vessels or cargoes, and all moneys paid for the benefit of those who insure buildings against loss or damages by fire are to be appropriated for that purpose only; and in no case will any assessment on premium notes received for insurance of vessels or cargoes, be made to pay any loss that may occur to buildings or anything pertaining thereto by fire, nor will any assessment be made upon any premium notes received for insuring buildings or anything pertaining thereto, to pay any loss that may occur to vessels or cargoes; and all expenses of the company shall be charged as equitably as possible to the respective class of property insured.
- 40 Sec. 16. The directors or surveyors shall survey and re-

port the size and situation of buildings to be insured, the value and materials of which they are composed, the risk to which they are subjected, and all other particulars which they may deem suitable and proper for the information of the board ; and shall receive one dollar for each survey, and twenty cents for each mile traveled from his residence to the place of survey, to be paid by the applicant.

Sec. 17. Notice of assessment shall be given by the secretary, by publication in two or more newspapers printed in Cumberland County, three weeks successively, the last 10 publication of which shall not be less than thirty days prior to the time fixed for their payment ; and in such other newspapers as the directors may deem necessary or expedient. The directors may also cause such notices to be published in handbills posted up in such places as they may direct.

In order that there may not be more than one assessment in any one year, and that such assessment may be paid at the annual meeting of the directors, the directors are authorized, in case of any loss or damage, to borrow such sum or sums of money as may be required to meet such loss or 20 damage, and in making the annual assessment the interest accruing on money borrowed, and all incidental expenses, shall be included in such assessment.

Sec. 18. Members of the company having policies changed or renewed, shall be entitled to a credit for cash desposited on the old policy in payment of the cash deposit required on the new note, in proportion that the whole cash in possession of the company at the time (deducting all losses and expenses unpaid) bears to the whole amount of premium notes, 30 not exceeding five per cent.

Sec. 19. No alteration or amendment to these by-laws shall be made, unless the same shall have been proposed at a meeting of the board previous to the one at which they are acted on ; and a vote of two-thirds of the directors present shall be necessary for the adoption of an alteration or amendment. The board of directors to be subject, of course, to any instructions which the company, at its annual or special meetings, may deem fit to give in relation to the by-laws or other regulations adopted by the board.

Sec. 20. Trustees of property and guardians of minors 40

may insure in this company for the benefit of their respective trusts, such trust being specified in the application, and they becoming personally responsible for the statements made and notes given.

Sec. 21. The conditions of insurance shall be as follows:

I. Application must be made to the secretary in writing, agreeably to a form which will be furnished to him, and the applicant will be bound by the application signed by him. And if he shall cause the subject insured to be described in the policy otherwise than it really is, so that the same shall be charged at a lower premium than otherwise proposed, or such description be false or fraudulent, such insurance will be void and of no effect. And no insurance will be considered as made or binding, until the terms of the company, as regards the premium, are complied with.

II. That in case the assured shall have already made any other insurance against loss by fire on the property herein insured, not notified to this corporation, or in case the assured or the assigns of the assured shall hereafter make any insurance on the same property, and shall not within ten days give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect.

III. If any person insuring any property in this company shall make any misrepresentation or concealment in the application, or otherwise, or if, after the insurance is effected, the risk of the property shall be increased by any means whatever within the control of the assured, or if the building or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, and not specified in the said application, such insurance shall be void and of no effect.

IV. If any property insured in this company shall be rendered more hazardous after such insurance is effected, by any means whatsoever not within the control of the insured, such person so insured shall immediately give notice to the secretary in writing, and the directors may either elect to continue the insurance upon the same terms, to continue it if the insured shall give his additional premium

note for such sum as the directors may determine, or may cancel the policy and return the premium note and the rateable proportion of the cash deposited; and if the insured shall omit in such case to give the said notice, then such insurance shall be void and of no effect.

V. Property held in trust, or on commission, must be insured as such, otherwise the policy will not cover such property; and in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein. *Goods* 10
on storage must be separately and specially insured. In all cases of insurance this company shall be liable for such rateable proportion of the loss or damage happening to the subject insured, as the amount insured by this company shall bear to the whole amount insured thereon, without reference to the dates of the different policies. And in case of fire, or of loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property. And it is mutually understood that there can 20
be no abandonment to the insurers of the subject insured.

VI. This company will be liable for losses on property burnt by lightning, but not for any loss or damage by fire happening by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power. Books of account, written securities, or evidences of debt, title deeds, writings, money or bullion, are not deemed objects of insurance.

VII. The insured sustaining loss or damage by fire, shall forthwith give notice thereof in writing to the company. 30
And as soon after as possible they shall deliver as particular an account of their loss and damage as the nature of the case will admit, signed with their own hands. And they shall accompany the same with their oath or affirmation, declaring the said account to be true and just; showing, also, whether any and what other insurances have been made on the same property; what was the whole value of the subject insured; in what general manner (as to trade, manufactory, merchandise, or otherwise,) the building insured, or containing the subject insured, and the several 40

parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also procure a certificate from some respectable person or persons contiguous to the place of the fire, and not concerned in the loss, stating that they have examined the circumstances attending the fire, loss or damage alleged; and that they are acquainted with the character and circumstances of the insured or claimant; and that they verily believe that he, she, or they, have, by misfortune, and without fraud or evil practices, sustained loss or damage on the subject insured, to the amount which they shall certify. And until such proofs, declarations and certificates are produced, the loss shall not be payable.

VIII. And whenever required in writing, the insured or persons claiming, shall produce and exhibit all books of account, papers and other vouchers in his possession or under his control, to the insurer or their agent, in support of his claim, and permit extracts and copies thereof to be made. And if the same shall be so required, the amount claimed by the insured shall not be deemed due and payable until said books, papers and vouchers, shall be produced and exhibited. All fraud or false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurer on the policy. In case differences shall arise, touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties.

30 IX. In estimating damages for furniture injured or destroyed, no allowance is made for jewels, plate, plated ware, medals, pictures, family paintings, sculpture, or musical instruments, unless particularly mentioned in the policy.

X. The interests of the insured in this policy is assignable, provided the consent of the company be first obtained to the transfer. When any property insured with this company shall be alienated by sale or otherwise, this policy shall thereupon be void, and be surrendered to the directors
40 of said company to be canceled; and upon such surrender,

the assured shall be entitled to receive his deposit notes, upon the payment of his proportion of all losses and expenses that have accrued prior to such surrender; but the grantee or alienee having the policy assigned to him, may have the same ratified and confirmed to him, for his own proper use and benefit, upon application to the directors and with their consent, within thirty days next after such alienation, on giving proper security to the satisfaction of said directors, for such portion of the deposit or premium note as shall remain unpaid; and by such ratification and 10 confirmation, the party causing such security to be given shall be entitled to all the rights and privileges, and be subject to all the liabilities to which the original party to whom the policy issued was entitled and subjected. Notice of such assignment shall be given before any loss may have happened. In case of the death of the insured, the policy shall remain good to the heirs or devisees of real estate, and to the executors or administrators of personal property, for six months after such death, and no longer; but the heirs, devisees, executors or administrators may at any time with- 20 in the said six months, have the same ratified and confirmed or renewed, on giving proper security to the satisfaction of the directors, for such portion of the deposit or premium note as shall remain unpaid.

XI. In case of total loss by fire, the insured shall return his policy to the directors to be canceled; and the directors shall also cancel the premium note, having first deducted all unpaid assessments and losses thereon from the amount insured. In case of partial loss by fire, the directors may require new security on the premium note before paying 30 the same; and the sum paid shall be endorsed on the policy, the same remaining good for the balance of the sum insured.

XII. The company may reserve to themselves the right, at all times, to terminate any risk they may have taken, after five days' notice to the maker, or his, her or their legal representatives, of any premium note the company may have received, if he, she or they shall refuse to make the said note satisfactory to the directors, by giving such additional security as will satisfy them that the said note, or such amount as may be assessed thereon, will be promptly 40

paid when demanded. In such case a pro-rata share of the premium received, and the premium note, will be returned.

XIII. All persons insured in this company shall pay a rateable proportion of all assessments which may from time to time be ordered by the directors, and in case of failure so to do for thirty days after publication thereof, the insured shall forfeit all rights which may have accrued to him as a member of the company, and the policy of insurance shall be void; and he will also forfeit the whole of the premium note, which may be forthwith sued for and recovered; but if the whole amount of said note is received by the company, the policy will then stand renewed, and remain in force until the end of the term limited therein.

XIV. Insurance once made may be continued for such further time as may be agreed on, provided a memorandum thereof be endorsed on, or annexed to, the policy, and all insurances, original or renewed, shall be considered as made under the original misrepresentation, in so far as it may not be varied by a new representation in writing which, in all cases, it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings.

XV. In case of any loss or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged with others of the same kind and quality, or to take the goods at their appraised value, or to rebuild the building within a reasonable time, giving notice of their intention to do so, within thirty days after having received the preliminary proofs of loss required by these conditions.

XVI. It is furthermore hereby expressly provided, and mutually agreed, that no suit or action of any kind against this company, for the recovery of any claim upon, under or by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within twelve months next after the loss or damage shall occur; and in case any suit or action shall be commenced against this company, after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive

evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding.

Sec. 22. In case any person insured shall neglect to pay their assessment for thirty days after publication, it shall be in the discretion of the directors or executive committee, if a satisfactory excuse for such be given, before any loss on the policy, to permit the assessment to be paid afterwards with the addition of twenty per cent., if paid within sixty days after the expiration of the thirty days aforesaid—and the further addition of ten per cent. for every thirty days 10 more, or any part thereof, and upon such payment the policy shall stand renewed, and the same, together with the premium note, remain in force, as if assessment had been paid in due time. The insured being credited on his note with the amount originally assessed, and forfeiting the addition thereto. No person whose assessment remains unpaid shall be permitted to insure any property in this company.

Sec. 23. When a policy is surrendered to be canceled or renewed, the secretary shall endorse the date of such surrender thereon, and on the premium note. But he shall not deliver up the premium note until the expiration of 20 twenty days thereafter, and until a proportionate part of all prior assessments and losses are paid.

The first part of the paper is devoted to a general
discussion of the subject. It is shown that the
theory of the subject is not yet fully developed,
and that there is a need for further research.
The second part of the paper is devoted to a
detailed study of the subject. It is shown that
the theory of the subject is not yet fully developed,
and that there is a need for further research.
The third part of the paper is devoted to a
detailed study of the subject. It is shown that
the theory of the subject is not yet fully developed,
and that there is a need for further research.
The fourth part of the paper is devoted to a
detailed study of the subject. It is shown that
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and that there is a need for further research.



