FIRE INSURANCE CASES:

BEING

A COLLECTION OF ALL THE REPORTED CASES ON FIRE INSURANCE, IN ENGLAND, IRELAND, SCOTLAND, AND AMERICA,

FROM

THE EARLIEST PERIOD TO THE PRESENT TIME,

CHRONOLOGICALLY ARRANGED.

VOL. I.

COVERING THE PERIOD FROM 1729 TO 1839.

WITH NOTES AND REFERENCES.

BY

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To

HON. REUBEN ATWATER CHAPMAN, LL. D.,

CHIEF JUSTICE OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS,

This Volume

IS RESPECTFULLY DEDICATED

BY THE EDITOR.

PREFACE.

THAT the actually adjudged cases are the only original and authoritative sources of the common law, and that text-books are at best often unreliable, is recognized by all. That these reported cases, scattered through so many hundred and even thousand volumes, are practically inaccessible to the great body of the profession is equally true. The only mode therefore by which the lawyer can be brought in direct contact with the primary sources of the law is to collect and present together the reported decisions upon its various branches. The publication of leading or selected cases, though extremely valuable, yet lacks the important element of completeness. If the lawyer is *assured* that he has before him every reported case upon the subject he is investigating, he has the satisfaction of knowing that no further research in that direction is necessary.

This collection is designed to embrace all the reported cases upon fire insurance on land, gleaned from the English, Scotch, Irish, and American reports, including the British Provinces, chronologically arranged. The present volume covers a period of over one hundred years, from 1729 to 1839. Possibly some cases have been omitted, which should have been inserted; if so, the Editor would be obliged to any one informing him of the fact; but it was not designed to include every case remotely connected with insurance, such as the obligation to insure, the division and apportionment of insurance money, etc., but only those cases which discuss the rights and remedies directly connected with the policy itself. The recent insolvency of so many insurance com-

panies seemed to render it specially appropriate to include the cases upon insolvent companies, and the powers and duties of receivers. The cases as to assessments by mutual companies, even during the period covered by this volume, will, for the sake of convenience, be found together in the second volume. The chronological arrangement is on the whole the best, since an arrangement by subjects is impracticable, as many cases present so many different points for decision. The opinions of the court are given in full, but the arguments of counsel have sometimes been condensed or omitted. The marginal notes have often been rewritten, and the reporter's statement of facts in some cases has been abbreviated. It is hardly necessary to add that the citations in both text and notes have been carefully verified.

Some notes and references have also been added; but from the nature of the cases they cannot be much extended without danger of repetition. They are generally in explanation of the true ground of the decision, as in Austin *v.* Drewe, p. 104, or a collection and examination of analogous principles and cases on other branches of the law, as in Scott *v.* The Phœnix Assurance Company, p. 122; or a reference to subsequent decisions confirming, modifying, or overruling the case to which they are annexed.

The second volume is already in press and will soon be published.

EDMUND H. BENNETT.

BOSTON, *May* 1, 1872.

TABLE OF CASES REPORTED.

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G.

H.

I.

FIRE INSURANCE CASES.

ROGER LYNCH and JOHN LYNCH, appellants, *vs.* ROBERT DALZEL, HENRY CARTWRIGHT, and JOHN EVERETT, respondents.[1]

(House of Lords, 13th March, 1729.)

Alienation of Property. — Assignment of Policy.

The party insured must own the property at the time of the loss. If before the loss he has sold the property, and after the loss assigns the policy to the purchaser, without the consent of the company, the latter is not liable to the assignee.

ABOUT the year 1709, some persons observing that great benefit accrued to the public by insurances made in the cities of London and Westminster against losses of houses by fire, but that such insurances did not extend to other parts of England, nor were there any insurances against losses of goods by fire, they formed a society for that purpose which was called the Sun Fire Office; and the undertaking was, from that time, so successfully carried on that hundreds of families have been thereby saved from ruin.

The society being sensible that such an extensive undertaking might give great opportunities for frauds, took all possible precaution for preventing them; and, therefore, their policies for insurance were so framed as to be contracts only between the office and the persons insuring; the loss secured against being thereby restrained and confined to the contracting persons only; and the policies referred to certain printed proposals containing the essential terms and conditions between the insurers and the insured, copies of which proposals were always delivered with the policies.

By these proposals the office insured houses, warehouses, goods, wares, and merchandise, except some particular things therein specified. And although it is essential to insurances that the persons insuring should have a property in the things lost, yet, to

[1] 3 Brown, P. C. 497; 4 Id. 431; Marsh. on Ins. 698.

opinions of witnesses were worth no more than the individual opinions of the jurors themselves, and would be very loose testimony upon which to convict a man of fraud and false swearing.

The evidence offered as to the amount of stock in the plaintiff's shop was equally loose and unsatisfactory. It was the mere opinion of others that other dealers in the same articles had much less stock, and hence the jury were to infer that the plaintiff had been guilty of a fraud. Fraud is not to be proved by surmises or suspicions.

I think the superior court decided correctly, and their judgment should be affirmed. *Judgment affirmed.*

ALLIANCE MARINE ASSURANCE COMPANY *vs.* LOUISIANA STATE INSURANCE COMPANY.[1]

(Supreme Court, Louisiana, March Term, 1835.)

Reinsurance. — Subrogation. — Prior Insurance.

Property shipped from New Orleans to Liverpool was insured by the owners in London about the time of its shipment, but owing to an accident to the ship was relanded and stored in New Orleans and was there again insured by the consignors at another office on account of whom it might concern. Being destroyed by fire while so stored, the London office paid the loss and brought suit for indemnity against the New Orleans office. *Held*, they could not recover; for they had neither authorized the second insurance nor ratified it before the loss, and there was no privity between them.

The plaintiffs, an insurance company in London, insured 323 bales of cotton in New Orleans, for £2,000. Subsequently the defendants, an insurance company in New Orleans, insured the same and other cotton "for whom it might concern," by a policy which by its terms was void in case of any "prior insurance not ratified and expressed therein." A loss occurring, the plaintiffs paid the amount and sued the defendants to recover the same. *Held*, that as the owner of the 323 bales could not have recovered of the defendants more than the amount of the loss which was not covered by the plaintiffs' policy in London (because of the want of notice of said prior insurance), the plaintiffs had no higher rights by way of subrogation than such owner possessed, and consequently could not recover.

THE chairman and directors of the Alliance Marine Assurance Company of London instituted suit against the Louisiana State Insurance Company in New Orleans, for the recovery of an indemnity of two thousand pounds sterling, or eight thousand eight hundred and eighty-eight dollars and eighty-eight cents, on a claim of reinsurance.

[1] 8 Louisiana (Curry), 1.

Reinsurance. — Subrogation. — Prior Insurance.

The plaintiffs allege, that at London, on the 25th of June, 1830, they insured Joseph Smith & Son on three hundred and twenty-three bales of cotton, shipped on board the ship *Aurora*, at and from New Orleans to Liverpool, against the usual risks and perils of the sea, the insurance amounting to two thousand pounds sterling; that the ship sailed from New Orleans the 3d of July, 1830, with the cotton on board, but was stranded at the Balize, returned to the city to repair, and stored the cotton in a warehouse or cotton-press. The consignees and agents of the ship and cargo, acting for the benefit of all concerned, or whom it might concern, made insurance at the office of the Louisiana State Insurance Company, on the 16th of July, 1830, on one thousand one hundred and twenty-seven bales of cotton, including the three hundred and twenty-three bales of Smith & Son, against fire, for the sum of forty-one thousand dollars; that said cotton was insured as stored in the cotton-press of James Freret, in New Orleans, and while the risk continued was wholly consumed and destroyed by fire, on the 1st of August, 1830.

They further allege they have paid two thousand pounds sterling on their own policy of insurance to Joseph Smith & Son, and that by reason of said payment, and under the policy taken out of the Louisiana State Insurance Company, they are entitled to be indemnified, and claim the said sum of two thousand pounds, equal to eight thousand eight hundred and eighty-eight dollars and eighty-eight cents, on the reinsurance.

They further allege that the Louisiana State Insurance Company has paid to others, under the same policy, the amount of their loss, and to Smith & Son the balance of the value of their cotton not covered by the policy in London, but refuse to indemnify and pay them (the plaintiffs) on the ground that they have no right to claim indemnity under the same policy or any other.

The defendants pleaded the general issue; and in their answer except to the plaintiffs' right to maintain their action; that they have not complied with the conditions of their policy of insurance, and particularly the eighth article, which relates to notice and proof of loss. They admit the execution of the policy sued on, but deny they are in any manner liable under it.

Upon these pleadings the parties went to trial on the merits. The evidence shows that the ship *Aurora* was consigned to the

house of Tayleur, Grimshaw & Sloane in New Orleans. Her cargo consisted chiefly of one thousand one hundred and twenty-seven bales of cotton, among which was three hundred and twenty-three bales shipped by the consignees to Joseph Smith & Son in Liverpool. The ship sailed from New Orleans the 2d July, 1830, and was stranded at the Balize, returned to the city, relanded her cargo, and the one thousand one hundred and twenty-seven bales of cotton were stored in the cotton-press of James Freret.

On the 16th July, 1830, Tayleur, Grimshaw & Sloane, the consignees of the vessel and cargo, caused insurance against fire to be made in the office of the Louisiana State Insurance Company, on the cotton thus stored, for one month. The policy expressed that the insurance was made "on one thousand one hundred and twenty-seven bales of cotton, being part of the cargo of the ship *Aurora*, stranded at the Balize, *for account of whom it may concern.*" The policy also contained a clause which says: "In case the buildings or goods herein mentioned have been already, or shall be hereafter insured by any policy issued from this office, or by an agent for this office, or by any other insurance company, or by any private insurers, such other insurance must be made known to this office, and mentioned in or indorsed on this policy, otherwise this policy to be void."

On the 1st of August, 1830, the cotton-press with the cotton stored in it, was consumed and destroyed by fire. The three hundred and twenty-three bales shipped to Joseph Smith & Son in Liverpool, was covered in part by a marine policy, taken out of the office of the plaintiffs in London, by the owners, on the 25th of June, 1830, "upon certain cotton, the property of Smith & Son, at and from New Orleans to Liverpool, to sail on or before the 1st of August, 1830." On preliminary proof of the loss of the cotton in New Orleans by fire being made, the plaintiffs paid the loss, amounting to two thousand pounds sterling. They now seek to recover this amount from the defendants.

James Grimshaw (of the house of Tayleur, Grimshaw & Sloane), witness for plaintiffs, sworn, says, "that he effected the insurance on the cotton mentioned, in the office of the Louisiana State Insurance Company; that the three hundred and twenty-three bales of cotton specified in the bill of lading an-

nexed to the policy of insurance, belonging to Joseph Smith & Son, were shipped by witness's house on board the ship *Aurora*, and after she was stranded at the Balize, were brought to the city and stored in the cotton-press of James Freret, Jr., and destroyed by fire on the 1st of August, 1830. The house of Tayleur, Grimshaw & Sloane acted as the agents of all parties interested in the cargo.

This witness also proved that he made the requisite preliminary proof of the loss of the cotton, and the insurance on it by the defendants. In an affidavit which he made for this purpose, on the 16th March, 1831, he makes the following statement: "That the insurance effected by him of the whole cargo of cotton was made without reference to any particular ownership, and expressly to secure the property against such risk, until it could be reshipped on behalf of whoever might be interested in it, owners or underwriters, whether any part or all was covered by marine policies in England."

"That Joseph Smith & Son were covered by a marine policy to the amount of two thousand pounds sterling, which this deponent claims of the Louisiana State Insurance Company on behalf of the underwriters, who were insured by this deponent against the risk of fire on the same. And the balance of the value or cost of said cotton, to wit: two thousand six hundred and ninety-one dollars and eighty-four cents, deponent claims as the agent of Joseph Smith & Son."

It further appeared that the Louisiana State Insurance Company paid the losses on this policy, which were not covered by the policy of the London office. But in making this payment, the insurers expressly say it is made on the value of the property destroyed, "less the amount insured thereon, in Great Britain or elsewhere."

Frederick Secretan, superintendent of the Alliance Marine Assurance Company in London, a witness examined by commission, on the part of the plaintiffs, in answer to cross-interrogatories, says, "that by the law of England, it is clearly and well established that a question of *reinsurance* can never become the subject of litigation; that a reinsurance, unless occasioned by the *failure* of the previous underwriters, is clearly illegal and void."

In answering the cross-interrogatory requiring him to state all

he knew in relation to the legality and validity of a contract like this, the witness says, "that he believes a contract like the one sued on is a lawful contract by the law of England;" and "that he has laid the facts of this case before Mr. Thomas Hale, a gentleman of great experience at Lloyd's Coffee-house, as an arbitrator and adjuster of claims, and who has made the following observations in writing on this question, in which this deponent entirely concurs:

"'When ships put into port with such damage as to require being unloaded, it is usual to insure cargoes against fire in warehouses; and in the adjustment of the expenses, the charge for such insurance is always placed to the cargo, consequently the first assurers on the respective goods pays this premium in consideration of having been relieved from such risk. It generally happens that the greater part, or perhaps the whole of the cargo is insured, and if the assurers at the intermediate port are to avail themselves of this circumstance, it of course follows that they take a premium erroneously. I am sure a case will not be found where the premium or any part of it has been returned. I expect a precedent for such a plea as that set up by the Louisiana State Insurance Company cannot be found. Such assurances being considered special, do not mix up with other insurances, and I have no doubt the sentiments of every insurance company are, that they would not make any inquiry respecting other insurances. First assurers being in the habit of paying premiums to second assurers, give such insurances very much the appearance of reinsurances. But, in the present case, the first assurers have not been paid the premium, neither have they in any respect been privy to the second insurance being made, so that the insurance effected by the Louisiana State Insurance Company is not a reinsurance; and, in my opinion, the point of law they appear so desirous of availing themselves of, completely fails them, as it ought to do.'"

The policy on which the assurance in London at the office of the plaintiffs was effected, has the following clause: "The said company bind themselves for the true performance of the premises, confessing themselves paid the consideration due unto them for the assurance by the assured, at and after the *rate of twenty-five* shillings per cent."

On the evidence of the case, the district judge, who tried it in the first instance, came to the conclusion "that the defendants insured for the benefit of all concerned, whether owners or marine underwriters; that the plaintiffs having paid Joseph Smith & Son, are subrogated to their rights; that this is not a case of double insurance or reinsurance, but one which stands on its own peculiar circumstances. The defendants received the premium for the risk they ran, and no good reason of law or justice excuses them from paying the loss."

Judgment was rendered for the plaintiffs, from which the defendants appealed.

Pierce & Hennen, for the plaintiffs.

1. The plaintiffs must recover in this case, because there was no fraud; and that it was a *bonâ fide* loss is admitted by the defendants, as they have paid the owners of the cotton the amount uncovered by the London office.

2. This is not a case of reinsurance, and the plaintiffs could not have been reinsured, expressly, as a reinsurance; for at the time, in England, this policy had not been executed.

3. If it amounts to a reinsurance, yet the rule of law requiring the insurance to be expressly effected, as such, ceases, under the circumstances of this case. To protect owners, insurers, or any person who might lose if the cotton was burnt, was the object of Tayleur, Grimshaw & Sloane in effecting this insurance; but they could not say who would be the parties interested, and this the defendants well knew.

4. For a case to amount to a reinsurance, it ought to be coextensive with the original insurance. This is certainly the law as to double insurance, and prevents it from being a double insurance.

5. The court has the most exact testimony from witnesses of great experience and respectability, as to the nature of the contract entered into by the defendants; and Tayleur, Grimshaw & Sloane were acting on a sudden emergency, for the benefit of they knew not whom. The reasons why this case is not classed under the branches of either a reinsurance or a double insurance are given, and the legality and frequency of cases similar to the present, and their astonishment at the objections of the defendants, it is true, yet with such seriousness as shows the opinion to have been well considered before uttered.

6. In conclusion of this argument, the court is respectfully referred to the authorities for a definition of reinsurance and of the assured. Phillips on Insurance, 56, 57, 60.

7. Lord Mansfield could never have here intended that two insurances on the same ship, not for the same entire risk, was a double insurance; and if not, the case before the court cannot be deemed one of that description. 1 Johns. 289.

Eustis, for the defendants.

1. There has been no compliance with the conditions of the policy, as to the proof of loss; these are conditions precedent. 3 Martin N. S. 223; Marshall on Insurance, 811.

2. In fire assurances the contract is one of mere indemnity, and there must be a real interest in the insured at the time of the loss. Hughes on Insurance, 506; Marshall, 784, 787, 803.

3. If the present contract be a double insurance, it is void by the terms of the policy.

4. But the contract as declared on is a case of reassurance; that is, one by which the insurers alleged themselves to have been insured. Has such a contract been made by the defendants?

5. The present contract must be governed by the law of insurance as it is settled in the United States. 5 Martin N. S. 543; 4 Lousiana Rep. 291; 5 Cranch, 331.

6. By the law merchant of the United States a contract of reassurance *must be express;* it is not construed by the general description of assured, "on account of whom it may concern." Phillips on Ins. 74; Hughes, 46; 2 Mass. 186; 3 Caines, 190; 3 Vincent, Legislation Commerciale, 566.

7. The plaintiffs cannot claim to be insured in this case, because they were without an insurable interest in the property. It is not the case of a double insurance. And to be a reinsurance it must be expressly made as such. Pothier on Assurance, 96, Notes to 34; 3 Pardessus, 240, No. 764, 765; Curia Phil. 516, No. 5; 2 Valin, 65; 2 Mass. 776; 3 Kent's Com. 226.

MATHEWS, J., delivered the opinion of the court.

This suit is brought to recover from the defendants eight thousand eight hundred and eighty-eight dollars and eighty-eight cents, which the plaintiffs allege to be owing to them on account of having paid that amount to certain persons styled Joseph Smith & Son, in consequence of a marine policy of assurance by them

subscribed, in favor of said Smith & Son, on the 24th day of August, 1830, in the city of London, etc. They obtained judgment in the court below, from which the defendants appealed.

The facts of the case are the following: Insurance was effected by Smith & Son on merchandise to be shipped from New Orleans to Liverpool (to be laden on the ship *Aurora*, which was to sail from the former port, on or before the 1st of August, 1830), to the amount of two thousand pounds sterling. Cotton belonging to the assured was put on board of this vessel, by their factors and agents, Tayleur, Grimshaw & Sloane, to the value of eleven thousand dollars and upwards. The ship left the port *a quo* on the 3d of July, but met with an accident before she reached the Gulf of Mexico, which caused so serious an injury as to compel her to return and unload for the purpose of being repaired. Her cargo, which consisted of cotton, was taken out, by order of the shippers, and placed in stores or warehouses; that belonging to Smith & Son, together with a larger quantity, was put into the warehouse or cotton-press of James Freret, Jr., where it was insured against fire, by a policy obtained from the defendants at the instance of the consignees of the ship, on the 14th of July, 1830, to continue in force until the 16th of August following. During this period, namely, on the 1st of August, the cotton of Smith & Son, thus insured, was destroyed by fire, and a claim for indemnity in behalf of the insured was made on the insurers; payment was, however, delayed until the latter discovered that, against the greatest portion of the loss suffered by the owners of the cotton, they were secured by a marine policy obtained from the plaintiffs, having effect from the 25th of June, 1830; in pursuance of which they paid the sum of two thousand pounds sterling, equal to eight thousand eight hundred and eighty-eight dollars and eighty-eight cents, to the assured, and now claim this amount from the defendants.

The record contains bills of exceptions to the manner in which commissions to take the testimony of witnesses in England were executed; also objections to the preliminary proof offered by the plaintiffs, necessary to entitle them to support their action, etc. But, in consequence of our conclusions drawn from the entire facts of the case, we deem it unnecessary to examine these matters.

Reinsurance. — Subrogation. — Prior Insurance.

In the argument of this cause, there was much disputation as to the character of the contract sued on; whether it is a reinsurance or a double insurance, or whether it is neither, and only simply aleatory; not subjected to the rules which govern in either of the former.

We consider it important to settle these questions, as the rights of the parties must be influenced by the nature of the contract under which the plaintiffs claim. It cannot be considered as sole and simple, for two policies existed, subscribed by distinct insurers, and both, according to their terms, covering risks on the property insured, at the time of its destruction and loss; that made by the plaintiffs having effect from the 25th of June, 1830; and the one executed by the defendants, from the 14th of July of the same year. The latter can therefore be viewed in no other light than as a double insurance, or reinsurance, according to the interest which the plaintiffs had in the things insured, at the time when the defendants assumed the risk for. the former. It is not pretended that they were owners, either absolute or *sub modo;* consequently, as such they had no insurable interest. They were concerned and interested only as having assumed the risks to which the property was exposed by the owners. From these premises, one of two conclusions necessarily follows; either that no insurance was effected for them, or that the policy subscribed by the Louisiana State Insurance Company was a reinsurance, intended to shift the risk from the Alliance Insurance Company, and place it on the last insurers, to the amount of property covered by the policy of the first; for they had no interest or concern in its safety, except as insurers. According to the first of these hypotheses, the plaintiffs are without a semblance of claim against the defendants. We have, therefore, only to inquire into the truth of the second, namely, whether a contract of reassurance was validly made.

A contract of assurance, although aleatory in its nature, is nevertheless synallagmatic and consensual, as containing evidence of reciprocal obligations. To render it valid the mutual consent of the contracting parties is necessary, given either by themselves or persons authorized by them to give such consent. In this respect it differs not materially from all other kinds of consensual contracts. The terms in which a contract of insurance is fre-

quently made, in favor of the applicant and all other persons concerned or interested in the property insured, to support it, requires proof of interest in the person acting or his authority to act for others who may be interested, previously given, or their sanction and ratifications of his acts, subsequently made, and prior to the loss of the things insured. See Baldasseroni's Treatise on Insurance, vol. 1, p. 193, *et seq.* 1 Phillips, 58, 59.

The authority of factors, consignees, and other general agents in relation to property committed to their care, and over which they exercise a qualified ownership, having power to buy, sell, or ship, on account of the real owners, to insure for the latter, need not be inquired into in the present case; because, according to the principles already assumed, the plaintiffs cannot be considered as owners in any shape. Admitting, then, the right and authority of Tayleur, Grimshaw & Sloane to act for Smith & Son in effecting the insurance which they did with the defendants, as legally consequent and resulting from their power as factors and shippers, without special authorization from the owners to this effect, it does not follow that they had any power or authority to act for the insurers in England, whom it cannot be pretended they represented, as factors or general agents. They could, therefore, proceed to obtain a reinsurance only under special authority given for that purpose. Any conclusion different from this would lead to the most absurd improbabilities. It would sanction a belief of extraordinary capriciousness on the part of the foreign assurers. That company appears to be composed of wealthy persons who formed their association for the sole purpose of taking risks in consideration of premiums; and the more they take, the better for the interests of the institution; what can be imagined more improbable than the taking an ordinary and fair risk on one day, and, without any apparent cause, desiring on the next to shift it from themselves on to others, by paying a premium to the latter?

The persons who acted in obtaining the policy from the defendants had no authority to represent the plaintiffs, previously granted; nor was their agency subsequently sanctioned by ratifying and confirming their acts in relation thereto, before the loss of the property insured. We therefore consider the contract, so far as the plaintiffs claim any benefit in it directly, to be wholly null and void.

It is readily seen that our opinion in the present case differs *toto cœlo* from that of the learned gentlemen of Lloyd's Coffee-house, as disclosed in the testimony of the witness Secretan. The opinions, however, entertained at Lloyd's, in relation to legal questions, are not, in themselves, entitled to any great consideration; they certainly ought to weigh very light in comparison with such as might be pronounced in Westminster Hall.

Hitherto we have considered the case only in relation to rights claimed by the plaintiffs, resulting directly from the contract entered into by the defendants, as having been made for the benefit of the former. But it was contended for them in argument, that, although they may not be entitled to sue directly on the policy, yet, having paid more than a ratable portion of the loss occasioned by the destruction of the property insured (in a risk taken both by themselves and the defendants), they are, of right, subrogated to the actions and claims of the owners, and should have refunded to them a ratable portion of the sum which they have paid in consequence of the loss. This would be to consider the contract sued on in the nature of a double insurance, which the pleadings do not authorize.

But if they did, it would not benefit the plaintiffs, for the sixth article of the general conditions of insurances, as established by the Louisiana State Insurance Company, was not complied with at the time the policy was subscribed; consequently, the owners themselves could not have recovered from the last insurers more than the amount of loss not covered by the assurers in London.

The plaintiffs certainly cannot justly pretend or claim to be subrogated to rights and claims which the owners had not themselves acquired. This proposition is so self-evident that the notice of it might well have been omitted.

It is therefore ordered, adjudged, and decreed, that the judgment of the district court cannot be avoided, reversed, and annulled; and it is further ordered, adjudged, and decreed, that judgment be here entered for the defendants and appellants, with costs in both courts.

Alienation. — Oral Lease. — Continuing Policy.

LANE *vs.* MAINE MUTUAL FIRE INSURANCE COMPANY.[1]

(Supreme Court, Maine, April Term 1835.)

Alienation. — Oral Lease. — Continuing Policy.

A prohibition against "alienation" in a policy on a store and goods therein is not violated by an oral lease of the store and a sale of the goods to the lessee, who after about six months retransfers the store and remaining goods to the insured.

A policy on a stock of goods in a store to the amount of $600, for a period of six years, covers any goods therein during that time, although purchased after the date of the policy; and a clause against alienation does not prevent a recovery.

An allegation in a declaration that the plaintiff's store was consumed is sufficient after verdict, without any other averment of ownership.

An omission to allege any value to the property destroyed is good after verdict.

THIS was an action of assumpsit on a policy of insurance, wherein the defendants insured the plaintiff against fire to the amount of two hundred dollars on his store, and the like sum on the goods in said store, for six years from the 17th day of January, 1832, promising, "according to the provisions of their act of incorporation, to pay the plaintiff the said sum within three months next after said buildings, etc., should be burnt." The store and its contents were consumed by fire on the night of the 7th of June, 1834.

In the eighth section of the act of incorporation, referred to in the policy, is the following provision, namely, "When the property insured shall be *alienated* by *sale or otherwise*, the policy shall thereupon be void, and be surrendered to the directors of said company to be cancelled; and upon such surrender the assured shall be entitled to receive his deposit note, upon the payment of his proportion of all losses and expenses that have accrued prior to such surrender."

It was proved that one James Dunn hired the store of the plaintiff, and purchased all the goods therein in May, 1833; put his son into the store, who traded there and continued to hold exclusive possession until November of the same year, when the plaintiff took back the store and goods under an agreement with Dunn to allow him a certain sum for his services, and to pay the debts and receive the dues of the store. From this time, the plaintiff continued in the exclusive occupation of the store, and traded therein until it was burned.

[1] 12 Maine, 44.