KERN, JACOB V SOUTH ST. LOUIS MUTUAL FIRE & MARINE INSURANCE COMPANY MARCH 1867 ST. LOUIS COUNTY 576/7

OLD 657/13

- REVERSED AND REMANDED
- INVOLVED.
  - INSURANCE - DAMAGES
  - ALTERATION - INCREASED HAZARDS
  - NON-CONSENT

Supreme Court St Louis
March Term 1867

Jacob Kern - Res.
v.
The South St Louis
Mutual Ins. Co. - Appll

Opinion of the Court

This case was tried in the St Louis Circuit Court and both parties seem to have proceeded in the trial upon the theory that the question really in issue was whether the additions and alterations made to the insured building by the plaintiff were such as materially to increase the risk and hazard from fire. This is a question of fact and its determination is peculiarly within the province of the jury.

A question is presented for consideration here that was not raised in the Court below and is one that we are not authorized to pass upon. It refers to the force and effect to be given to a condition attached to the policy upon which this suit

was brought which requires a notice to be given of every change to a building insured or in which property is insured by the company made by repairs, additions or otherwise

If made without the consent or approval of the President in writing ~~before making the change~~ previously obtained the policy is to have no effect until the approval of the President or directors is secured. It is true that the plaintiff in declaring upon the policy refers to it as being attached to and made a part of the petition

But whatever form of words may be used in referring to papers which are to be understood as mere exhibits in the cause they cannot in any proper sense make them parts of the pleading. Hamen v. Home Mutual Ins. Co. 13 Mo. 473.* It is true that the defendant sufficiently denies that the plaintiff complied with all of the conditions and stipulations in the policy but still the point is not presented in such a manner that we can consider it here

* Curry v. Jackey 35 Mo. 392, Baker v. Berry 37 Mo. 306
Bentley v. McFarlane 38 Mo. 465

The policy covered a two story brick building situated on the North west corner of Third and Lombard streets in the City of St Louis and in which there was a wagon-makers and Blacksmiths shop.

The whole amount of insurance was $5000 — $2500 on the building and the same amount on the stock in the shops.

It appears that the building was consumed by fire on or about the 8th day of January 1864. The fire was first discovered about five o'clock in the morning and was then burning in the building and in the house adjoining. About six months previous to that time the plaintiff had erected a steam-boiler with a furnace beneath it of the length of twenty feet and about eight feet high adjoining the North wall of the insured building and that a wooden shed about thirty five feet long, fifteen feet wide and twelve feet high had been erected to cover the same

that a gang of two saws had been placed at the Eastern end of the shed and under it for the purpose of sawing the timber used in the shop. The engine was placed inside of the brick building and supplied with steam by a pipe passing through the wall.

This seems to have constituted the substance of the facts proved on the trial. The jury were left to decide the question as to the increase of risk upon the description of the alterations and additions alone. The testimony offered on the part of the defendant ought to have been admitted. In the case of Webster v. Eastern Railroad Company 2 Met. 147 a witness was called to give his opinion upon the question whether the proximity of a railroad to the insured property would be likely to increase the rate of premium of insurance against fire. He did not profess to be an expert but his means of knowledge on this subject resulted from his having been for a long time keeper of a fire insurance office and as such "charged with the duty

of examining buildings and taking into consideration all circumstances bearing upon the risk and rate of premium." The court held that these facts "rendered him competent to give his opinion as evidence to the jury upon that subject."

So we think in this case that the witness John E. Vogel after stating that he had been "an officer in an insurance company in the City of St Louis for twelve years past and that he was familiar with insurance in mutual insurance companies and the rules of insurance" made him a competent witness to give his opinion on these subjects. It must be to a very great extent matter of opinion at last and the value of opinions in such cases must greatly depend upon the experience and familiarity with the business possessed by the persons called upon to give them. Jurors cannot be presumed to be so familiar with questions of this sort as to be able to give their opinions correctly merely upon having a description of the premises with the alterations and additions made by the assured.

The instructions given contained correct propositions of law and if all the competent

evidence offered in the case had been permitted to go to the jury there would have been no reasonable ground of complaint.

All the authorities so far as they have been examined agree in the conclusion that when the alterations or additions materially increase the risk so that the insurer would be entitled to a higher rate of premium the policy is to be treated as absolutely void if the assured fails to give the notice required. Gaomer et al. v. Piscataquis Mu. Fire Ins. Co. 38 Maine 539. Henry v. Commonwealth Ins. Co. 10 Pick. Francis v. Somerville Mu. Ins. Co. 1 Dutcher's Rep. 78. Boutwright v. Etna Ins. Co. 1 Strob. Rep. 281. Schenck v. Mercer County Mu. Fire Ins. Co. 4 Zab. N. J. 447.

By its refusal to admit competent testimony therefore error was committed by the Court and the judgment is reversed and the cause remanded for further trial.

The other judges concur

Thos. J. C. Hagg

Jacob Kern — Res.

v.

South St. Louis Mutual Ins. Co. — Appt

Opinion of the Court

Fagg

Filed April 22. 1867
O. T. Fishbackelk
per E. P. McCarty Dep

Reversed and Remanded

1. State of Missouri }
County of St. Louis } S.S.

Be it remembered that heretofore to wit: On the 9th day of September A.D. the year One thousand eight Hundred and sixty five there was filed in the office of the Clerk of the St. Louis Circuit Court a petition in the words and figures following, to wit:

Petition "Jacob Kern Pltff

vs

South St. Louis mutual
Fire & Marine Insurance
Company. Defts.

Cir Court
St. Louis Co
Sept 9 1865

The plaintiff Jacob Kern states that the defts The South St. Louis mutual Fire & marine Insurance Company are a corporation by virtue of a charter from the legislature of the State of Missouri

That on the 28th day of November 1862 the said defendants made and delivered to the plaintiff their policy of insurance and thereby in consideration that plaintiff had bound and obligated himself his heirs executors and administrators to pay to defendants all such sum or sums of money as might be assessed by the Directors thereof, pursuant to an act incorporating said company passed march 10. 1859 & also secured to said

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3. time worth the further sum of 10000 dollars.

That the plaintiff has fully complied with and performed all the conditions in said policy to be performed by him and all agreements by him to be performed, and the time has elapsed within which the defts are bound to pay said sum of 5000 dollars for which an action has accrued to the pltff and the plaintiff prays judgment for the sum of 5000 dollars and interest &c

Glover & Shepley
for pltff

Charles F. Blatteau agent for Jacob Kern on his oath says he believes the statements in the foregoing petition to be true as made therein

Charles F. Blatteau

Sworn to and Subscribed before me this 9th day of September 1865

Witness my hand and seal of office

F A J Schneider Clk. M

Whereupon on the same day the following Summons issued to-wit:

Summons.

County of St. Louis,
The State of Missouri
To the Sheriff of St. Louis County — Greeting:

4. We command you to summon South St. Louis Mutual Fire and Marine Insurance Company to appear before the Judge of our Circuit Court, on the First day of the next Term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the Last Monday of September inst. then and there to answer the complaint of Jacob Kern as set forth in the annexed petition: and have you then and there this writ.

Witness F. A. H. Schneider, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 9th day of September in the year of our Lord, eighteen hundred and sixty five

Seal

Mo.

F. A. H. Schneider Clerk."

Upon the back of which summons, the Sheriff made his return, which is in the words and figures following to wit:

Sheriff's Return.

"Executed this writ in the County of Saint Louis September the 9th 1865 by delivering a copy of the writ & Petition as furnished by the Clerk to F. W. Cronenbold the President of the South Saint Louis Mutual Fire & Marine Insurance Company.

John C. Vogel
L. Burg D.S. Sheriff"

5. And afterwards, to-wit: on the 7th day of October 1865 Defendants' answer to Plaintiff's petition was filed, which is in the words and figures following to-wit:

Deft Answer to Pltff's petition

Jacob Kern vs. Pltff South St Louis Fire & Marine Insurance Company. Deft.	In the Circuit Court St Louis County September Term 1865

The Defendants answering on oath say that they admit they issued to Pltff a policy on the buildings & stock as stated in the petition & for the sums as stated, but they also say that at the time said policy was issued & said contract entered into, there was not in said building any steam engine, in which fire was used, ~~that~~ that afterwards & before the said buildings & stock was destroyed by fire as alleged, the Pltff. placed or caused to be placed in said building a steam engine, in which fire was used & that the said Pltff used said engine constantly, for the purpose of propelling machinery in said building & thereby greatly increased the hazzard & risk of burning said building & stock, & that this was done without the knowledge or consent of the Defendants, & was a violation of the terms ~~and~~ & conditions of the said policy of Insurance issued to the Pltff. as will appear

6. by an inspection of the same.

And the Defts say they are informed & believe that the fire which destroyed the said building & stock, was started & caught in the engine room of the steam engine so put in by Pltff in violation of his said policy or contract, & that the said fire & steam engine was the direct & immediate cause of the fire which destroyed said building & stock.

The Defts say that by all the foregoing the Pltff violated the terms & conditions of his said policy & forfeited all claim or right to have & recover damages of Defts on account of said fire.

Defts deny that Pltff has complied with & performed all the conditions in said policy to be performed by him & all agreement by him to be performed & deny that they are in any way liable to pay the Pltff anything under or by virtue of said policy or contract, & ask for judgment & for their costs

By Hill & Jewett
their Attys

I, F. W. Cronenbold President and Agent of the Defendants on oath says that the above answer & the matters therein as stated he believes to be true

F. W. Cronenbold

State of Missouri }
County of St. Louis }

7. Sworn to and subscribed before me this Seventh day of October 1865

Ch. Fischbach
Notary Public

Seal

"

And afterwards, to-wit: at the said September Term of said Court the following proceedings were had in said cause, to-wit:

"Tuesday December 5th 1865.

Proceedings of Dec. 5th 1865.

Jacob Kern
vs
South Saint Louis Mutual Fire and Marine Insurance Company.

Now come the parties by their respective attorneys and also a jury to-wit: Henry Wolfes, William A. Stacy, John G. Wason, William Setter, John G. Booker, John Scanlin, E. D. Ruth, Edward O'reily, C. F. Kressell, James Denner, Peter Weis and Valentine Bontran twelve good and lawful men who being duly ~~elect~~ elected tried and sworn the issue herein joined well and truly to try the trial progress but not being finished is laid over until to-morrow morning at ten O'clock,"

"Wednesday December 6th 1865

Proceedings of Dec. 6. 1865

Jacob Kern
vs.
South Saint Louis Mutual Fire and Marine Insurance Co.

Now come the parties by their respective attorneys and by leave of Court the defendants file an amended answer

8. herein and also come the jurors empannelled and sworn herein and the trial of the cause progresses but not being ~~not being~~ finished is laid over until December Eighth Eighteen hundred and sixty five at ten Oclock."

Which said amended Answer is in the words and figures following to wit:

Deft's Amended Answer

"Jacob Kern
vs Pltff.
The South St. Louis Fire & Marine Insurance Company. Defts

Circuit Court
St. Louis Co
Sept. T. 1865.

The Defendants answering on oath say that they admit they issued to Pltff a policy on the building & stock as stated in the petition, & for the sum as stated, but they also say that at the time said policy was issued & said contract entered into, that was not in or near said building any steam engine in or about which fire was used, & that afterwards ~~in~~before the said building was burned & stock was destroyed by fire as alleged, the Plaintiff erected or caused to be erected a building of wood & other inflamable materials next to & adjoining said building so insured ~~&~~ placed therein a steam ~~engine~~ boiler & furnace in which fire was used & also placed in said building so insured a steam engine, connected with & run

9. by the steam from said boiler & that said engine was connected with machinery in & immediately out of said insured building & such machinery was run by said engine, fire being used therefor & this was all done & before said fire without the knowledge or consent of the Defts — Said engine was run by steam & by the use of fire, connected therewith for a long time before said building was burned as aforesaid — & without the knowledge or consent of the Defendants — And the Defts further say that said Plff, after said policy was issued to him & said contract made, erected or caused to be erected next to & adjoining the insured building, another building of brick & used the same for a waggon makers shop, putting therein a large amount of inflamable materials, & also connected the said new building with the building insured, by a large opening — & all this was before said insured building was burned & was all without the knowledge or consent of the Defts — Whereby.

By means of all the foregoing the said building so insured was so altered & changed that it was exposed to much greater risk & hazard from fire, than it was when insured by Defts & the risk & hazard of burning said building was generally, by all the foregoing greatly increased — in violation of & contrary to the terms & conditions of said policy issued to said Plff.

10. & to the charter & by laws of said company, of which said Plaintiff was a member & thereby the Pltff's policy of Insurance became void of no effect.

— Deft's say they are informed & believe that the said engine & boiler & fire used in & about the same & the said new building erected adjoining the building so insured was the immediate cause of the said fire, whereby said loss occurred.

Defts say that by all the foregoing the terms & conditions of said policy & the Charter & by laws of said company was violated by the Pltff, who has thereby lost his right to have & recover of the Defts the damages claimed, or any part thereof.

— Defts deny that Pltff has complied with & performed all the conditions in said policy to be performed by him & all agreements by him to be performed, and deny that they are in any way liable to pay Pltff anything under or by virtue of said policy or contract and ask judgment & for their costs

Hill & Jewett
Attys for Defts.

County of St. Louis ss. F. W. Cronenbold President of Defendant, being sworn says he believes the foregoing amended answer & the

11. matters & things therein as stated therein are true & affiant had no knowledge of the building of the wooden shed, for the boiler until the evidence was given in this case to day.

Sworn to ~~to~~ Subscribed before me this 5th day of December 1865 } F. W. Cronenbold

F. A. H. Schneider Clk "

And afterwards to wit: on the 8th day of December the following proceedings were had in said cause to wit:

Judgment. " Friday December 8th 1865

Jacob Kern vs South St. Louis Mutual Fire and Marine Insurance Company } Now come again the parties by their respective attorneys and also the jurors empannelled and sworn herein and the trial of this cause progresses and being finished the jurors aforesaid upon their oaths aforesaid say they find for the plaintiff and assess his damages at the sum of Five thousand four hundred and fifty Dollars, It is therefore considered by the court that the plaintiff recover of the defendant the damages aforesaid as by the jury assessed together with his cost and charges in this behalf expended and have execution therefor. "

12. " Friday December 15th 1865

Motion for New trial overruled

Jacob Kern
vs
South Saint Louis Mutual Fire and Marine Insurance Co

The motion for a new trial filed herein being heard and fully considered by the court is overruled. "

And afterwards to-wit: on the 30th day of December 1865 the following proceedings were had:

Appeal allowed + Bond approved

" Saturday December 30th 1865

Jacob Kern
vs
South Saint Louis Mutual Fire and Marine Insurance Company

Now comes the defendant and files an affidavit for an appeal and on its motion an appeal is allowed it to the Supreme Court from the judgment herein rendered, it thereupon files an appeal bond which is approved by the court. Bill of Exceptions filed. "

Which affidavit for an appeal is in the words and figures following, to-wit:

Affidavit for Appeal

"Jacob Kern
vs.
South St. Louis Mutual Fire and Marine Ins. Co

In St. Louis Circuit Court September Term 1865

State of Missouri
County of St. Louis

Britton A. Hill attorney for defendant makes oath and says that the appeal in

13. The above entitled cause is not made for vexation or delay, but, as this affiant believes, because said defendant is aggrieved by the judgment rendered against it in this court, and this appeal is taken by atty of Deft.

Subscribed and sworn to
before me this 30th day
of December 1865

Britton A Hill

F. A. Schneider Clk

And which Appeal Bond is in the words and figures following, to wit:

Appeal Bond.

"Know all men by these Presents, That we Victor Vogel as principal, and Ferdinand H. Cronenbold, Britton A. Hill as securities are held and firmly bound unto Jacob Kern in the sum of Eleven Hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis, this 30 day of December, A.D. 1865.

$1100

The condition of the above obligation is such, that whereas The South St. Louis Mutual Fire & Marine Ins Co has appealed from the judgment rendered against it and in favor of Jacob Kern in the St. Louis Circuit Court, for the sum of Five thousand four hundred & fifty dollars,

and — cents, together with costs.

Now, if the said appellant will prosecute its appeal, with due diligence, to a decision in the Supreme Court; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Circuit Court to give; and, if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against it by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

approved in Open Court Dec 30th 65 — Victor Vogel Secy (Seal)
Ferdinand H. Cronenbold (Seal)
F. A. H. Schneider Clk — Button A. Hill (Seal)

"

And which said Bill of Exceptions is in the words and figures following; to wit:

"In the Circuit Court.

Bill of Exceptions — Jacob Kern Plaintiff vs. The South St. Louis Mutual Fire & Marine Insurance Company — Defendant — Bill of Exceptions of Defendant.

Be it remembered that on the trial of this cause the plaintiff gave the following evidence

15

to the jury:

1st The policy of insurance as follows:

Policy.

South Saint Louis Mutual Fire and Marine Insurance Company

No. 170	Policy.	Premium Note	$450.00
$5000.00	Sum Insured	Ten per cent Paid	$45.00
9	rate per cent.	Policy	$1.00

This Policy Witnesseth:

That whereas Jacob Kern has bound and obligated himself, his heirs, executors and administrators to pay to the South St. Louis Mutual Fire and Marine Insurance Company all such sum or sums of money as may be assessed by the Directors thereof, pursuant to an act incorporating said Company, passed on the 10th day of March, 1859; and also secured to said Company the sum of Four Hundred and Fifty Dollars, being the amount of his deposit or Premium for insuring the sum of Five Thousand Dollars unto himself, his heirs, executors, administrators and assigns, on the following property, to wit:

I. Twenty Five Hundred Dollars on a Two Story Brickbuilding

II. Twenty Five Hundred Dollars on Stock in Wagonmaker and Blacksmiths Shope, therein, situated on the Northwest corner of Third & Lombard streets, Block 75 in the City of St. Louis, Mo.

16 Five Thousand Dollars insured in the St. Louis Mutual Ins. Co

Reference being had to his application of even ~~date~~ number herewith, filed in the office of the Company, for a more particular discription, and as forming part of this Policy, during the term of Six years commencing at noon on the Twenty Eight day of November eighteen hundred and Sixty two and ending at noon on the Twenty Eight day of November eighteen hundred and Sixty Eight.

Now be it known, That the South St. Louis Mutual Fire and Marine Insurance Company, for and in consideration of the premises, does hereby certify that the said Jacob Kern is insured in and by said Company, upon the property aforesaid, in the sum of Five Thousand Dollars,

And the said Company, do hereby promise and agree to make good unto the said insured, his ~~heirs~~ executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, during the period above specified, six years, the said loss or damage to be established according to the true and actual cash marketable value of the said property at the time the same shall happen; and to be paid within three months after due notice and proof thereof made by the insured, in conformity

17. to the conditions annexed to this Policy, unless the Directors shall within said three months determine to rebuild or replace the property destroyed. Provided always, and it is hereby declared that this Corporation shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot or civil commotion, or of any military or usurped power, earthquake or hurricane, or any loss by theft at or after a fire.

And Provided Further, that in case the assured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this corporation, and mentioned in or endorsed upon this Policy, then this insurance shall be void and of no effect, And if the said assured, or his assigns, shall hereafter make any other insurance upon the same property, and shall not, with all reasonable diligence, give notice thereof to this Corporation, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this Policy shall cease and be of no further effect. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this Policy, the assured shall not, in case of loss or damage, be entitled to demand or recover on this Policy

18.

any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And It Is Agreed And Declared to be the true intent and meaning of the parties, that in case the above mentioned property or premises, or any part thereof, shall, at any time, after the making and during the time ~~of~~ this Policy would otherwise continue in force, be appropriated, applied, occupied, or used, to and for the purpose of carrying on, or exercising therein, any trade, business or vocation, denominated hazardous, or extra-hazardous, or Specified in the memorandum of Special rates, in the terms and conditions annexed to this Policy, or if during such time the above mentioned premises or property be appropriated, applied, occupied, or used for the purpose of depositing, keeping, & Storing, using or vending therein any of the articles, goods or merchandise, in the memorandum of ~~Special rates~~ aforesaid, denominated hazardous or extra hazardous, or included in the memorandum of Special rates, unless herein otherwise specially provided for, or hereafter agreed by this Company, in writing, and added to or endorsed upon this Policy then, and from thenceforth, so long as the same shall be so appropriated, applied, used or occupied, these presents shall

or if such premises are privileged to be occupied for certain purposes, denominated hazardous, or extra hazardous, or included in the memorandum of Special rates by this company, in writing, and they shall, at any time afterwards, and during the continuance of this insurance, be occupied for other purposes, denominated hazardous or extra hazardous or included in the memorandum of Special rates, unless herein otherwise specially provided for or hereafter agreed by this company in writing, and added to or endorsed upon this policy.

cease and be of no force or effect. And it is Moreover Declared, that this insurance is not intended to apply to or cover any books of accounts, written securities, deeds or other evidences of titles to lands — nor to bonds, bills, notes, or other evidences of debt — nor to money, bank notes or bullion; and this Company will not be liable for any losses by fire, in consequence of neglect or violations of laws or regulations of police, existing and in force at the date of this Policy, made to prevent accidents from fires in places where laws and regulations upon this subject exist. And it is conditioned that no greater amount than twenty-five pounds of gun powder shall, at any time, be placed in the building insured by or described in this Policy. Said powder to be kept in tin or other metallic canisters; and that all friction matches shall be also kept in tin or other metallic vessels, except which may be kept by wholesale dealers, contained in Close Wooden boxes, containing not less that one gross. And that this Policy is made in reference to the memorandum of classes of hazards, and the terms and conditions hereunto annexed, which make a part of this Policy, and which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all

cases not herein otherwise specially provided for.

☞ The interest of the insured in this Policy is not assignable, unless by consent of this Corporation, manifested in writing on this Policy, and in case of any transfer, or termination of the interest of the insured, either by sale, process of law, or otherwise, without such consent, this Policy shall from thenceforth, be void and of no effect.

It is agreed by the Assured, that in case there shall be any building erected immediately adjacent or adjoining the above described building, which shall materially increase the risk or hazard of fire, that notice shall be given the Company immediately, that an examination can be made by the agent or Agents of the Company, and the rate of insurance increased or Policy cancelled, at the option of either party.

☞ The Conditions of Insurance hereto annexed, the act incorporating this Company, and the By Laws of the same, as published in pamphlet form, constitute a part of this Policy.

In Witness whereof, The South St. Louis Mutual Fire and Marine Insurance Co. have caused these presents to be sealed with their seal, and signed by their President, and attested by their Secretary, in the City of

21. St Louis, State of Missouri, on the Twenty Eight day of November in the year of our Lord one thousand eight hundred and Sixty-two

Seal

attested

J. W. Cronenbold President

Ch. Fischbach Secretary.

Conditions of Insurance.

Conditions of Insurance.

In estimating damages for furniture injured or destroyed, no allowance is made for musical instruments of any kind, nor for family paintings nor for articles of plate or plated ware. Nor is any allowance to be made for books, maps, or pictures of any kind, unless specially mentioned in the Policy.

This Company shall not be liable or responsible for any loss or damage when the insured has more gunpowder in store than is allowed by the Tenth Section of Art. III of the By Laws, whether the loss is occasioned by the gunpowder or not. Gunpowder is not insurable; nor is this Company held responsible for any loss or damage occasioned by it. None of the articles, and trades or establishments which are prohibited from being insured,

22. either in Section 9th of the Charter of this Company, or in the By Laws published are covered in this Policy. This Policy shall not be assignable, without the consent of the President, and countersigned by the Secretary. In case the insured shall have already any other insurance against Loss by fire, on the property hereby insured, not notified to this Company and mentioned in or endorsed upon the Policy, then this insurance shall be void and of no effect. And if ~~any subsequent insurance shall be made upon the property hereby insured, which with the sum or sum~~ the insured, or his assigns, shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this Company, and have the same endorsed on this Policy, or otherwise acknowledged by them in writing, this Policy shall cease to be of effect. And if any subsequent insurance shall be made upon the property hereby insured, which with the sum or sums already insured, should, in the opinion of the President and Directors of this Company, amount to an overinsurance, said Company reserve to themselves the right of cancelling this Policy; and in case of any other insurance upon said property, whether

2 3.

prior or subsequent to the date of the Policy, the assured shall not, in case of loss or damage, be entitled to demand of this Company any greater portion of loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on said property. And in case the building or buildings hereby insured, shall, at any time after and during the continuance of this insurance, be appropriated, applied or used to, or for the purpose of carrying on or exercising therein any trade, business or vocation denominated hazardous or extra hazardous, other than stated in the application or for the purpose of storing or keeping for sale therein any article, goods or merchandize hazardous or extra hazardous, unless herein otherwise specially provided for, or hereafter agreed to by this Company in writing, and added to, or endorsed upon this Policy - then and thenceforth, so long as the same shall be so used, appropriated, applied, or occupied, these presents shall cease to be of effect.

If during the insurance, the risk is increased by the erection of buildings, or by the use or occupation of neighboring premises, or otherwise, or if, for any other cause, the Directors shall elect, it shall be optional with them to terminate insurance, after notice is given to the assured, or representa-

tives, of their intention to do so. But in every case of termination of insurance, the assured shall be bound to pay his or her proportion of assessment up to the day of actual cancellation of the policy on the books of said company.

In case of loss or damage by fire the insured shall, as soon after as possible, deliver in a particular account of the loss or damage, signed with his own hand, or his legal representative, and verified by oath or affirmation, and such witnesses as he may have, shall be named in the account of loss; and the assured shall also, if required, submit to an examination under oath, by the agent or attorney of the Company, and answer all questions relating or touching to the loss or damage, and submit all his books and accounts for examination, if required; and in case of fraud, or false swearing, the insured shall forfeit all claim under this Policy. When merchandise, or other personal property, is partially damaged the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds and quality, and shall cause a list, or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of each article by disinterested appraisers, mutually agreed upon-

25. One-half the expense to be paid by the insurer. The agents of either party are authorized to act in this matter, And it is further agreed, that no change of the Building or Buildings herein insured, or in which property is insured by this Company, shall be made by repairs, addition, or otherwise, without the consent or approval of the President of this Company in writing, before making such change. Any breach or violation of this provision shall render this Policy of no effect during such a change, and until such change shall be approved by the President or Directors. Insurance is in no case made on more than two-thirds of the value of any building, nor more than one half of the value of furniture, or one half of the average amount of stock in trade; and in case of total loss the Company is not liable to pay more than two-thirds of the actual value of the building at the time of its loss, nor more than one-half of the value of personal property. Partial losses are paid in full, not exceeding the amount insured, provided, that the insured has on hand the lowest amount stated in the application. This Policy is made and accepted with reference to the Application of insurance, which forms a part thereof.

26.
By
Laws.

By Laws
of the
South St Louis Mutual Fire & Marine
Insurance Co.

Article I. Of Meetings.

Sec. 1. The annual meetings of the Company shall be held on the first Saturday in May in each year, (the first to be on the second Saturday in April 1859) at such place in the City of St. Louis as the Directors may order, and shall be notified by advertisement, signed by the Secretary, and published twice at least in two or more newspapers printed in St. Louis, the last publication of which shall be not less than three days before the time of holding said meeting.

Sec. 2. At every meeting of the Company the president shall preside, and in his absence the secretary or any Director may call to order and preside until a Chairman be chosen. The election of Directors shall be by ballot, each member having one vote; and absent members voting by proxy must authorize such proxy or proxies in writing, signed by the person represented, a form for which is hereunto annexed, which shall be filed with the secretary: Provided, that none of the Officers or Directors of

27. Company shall be allowed to vote by proxies at any election for Directors. All other questions may be determined by voting in such way as the majority of voters present may deem proper.

Form for Proxies

"To the South St. Louis Mutual Fire and Marine Insurance Company.

"— hereby authorize and empower —— to vote —— for Directors, at the — annual meeting of the South St. Louis Mutual Fire and Marine Insurance Company, to be held in St. Louis, Saturday, May, —. Given under hand, this — day of —, 18—.

Witness: ——

Article II. Of Officers and Committees

Sec. I. The President shall attend, as often as it becomes necessary, at the office of the Company; he shall approve, by endorsement upon the back, all applications for insurance, after the same have been examined and reported upon by the Committee on Applications, and, jointly with a committee of two Directors examine all losses sustained by the Company. The President shall sign all policies, checks and orders for the payment of money, and the same shall be countersigned by the secretary. He shall have the general supervision of the affairs of the Company, and direct where the funds of the Company are to

be deposited, and see that the same and other property belonging thereto be safely kept; and he shall exhibit to the Directors, at each monthly meeting, a statement of the affairs of the Company.

Sec 2. The Secretary shall keep the books and accounts, fill up and record all policies of insurance, countersign policies and checks, and notify and attend all meetings of the Directors and Company, and perform all such other duties in the office as the President may require. He shall hold his office for one year, unless sooner discharged by the Board of Directors, and until his successor shall be duly appointed and qualified, and shall be sworn to the faithful discharge of his duties.

Sec. 3. The Treasurer has to give sufficient security to the Directors for the funds in his hands; it is his duty, immediately after any assessment is ordered, to instruct the Secretary to forward to each individual assessed a separate notice, stating the amount of his assessment, and the day on which it will become due. Notice of assessments shall also be given by the Treasurer, and published in one or more newspapers printed in St. Louis, ten days successively, the last publication of which shall not be less than two weeks prior to the time fixed for the payment, and in such other news-

29. papers as the Directors may deem expedient.
Sec. 4. The Committee on Applications shall consist of three Directors, whose duty it shall be to examine all applications for insurance, and pass on the approval or rejection of same; shall fix the sum to be taken on each risk, and the rates of insurance, subject however to the approval of the President, The committee shall be appointed by the President, and serve for three months, or until their successors are appointed.
Sec. 5. The Committee on fires shall consist of two Directors, to be appointed by the President, and shall serve for three months; it shall be their duty to inquire into the cause and origin of each fire, and ascertain and determine the loss sustained by the assured, and report the same to the Board of Directors at their next regular or stated meeting. The President shall be ex officio a member of this committee.
Sec. 6. The Secretary shall receive such compensation for his services as the Board of Directors may determine. The President, Treasurer, Directors and standing committees shall receive no compensation nor salary for their services.

Article III. Of Hazards and Conditions of Insurance.

Sec. 1. The Company will make insurance for

any term not less than one month and not more than six years; and the amount of the Premium note, or sum to be deposited for the insurance of any building, shall be according to the hazard of such building, or the danger to which it may be exposed to loss or injury by fire, taking into consideration the materials of which it is composed, the manner of its construction, the purposes for which it is used, its situation as to other buildings, and all other circumstances affecting its risk.

Sec. 2. Buildings are divided into the following classes, and the amount of the premium notes required for their insurance will be the aggregate amount of the yearly premiums for the time insured, agreeably to the rates following, to wit: First Class - Houses or Stores of stone or brick, with roofs of slate, metal or other fire-proof roofs and iron shutters, unconnected with and not exposed by other buildings - from one to one and a fourth per cent. per annum. Second Class - Houses or Stores of stone or brick, with roofs of wood, unconnected with and not exposed by other buildings; houses or stores, with brick or stone sides or ends, in which the fire-places are constructed standing alone, and not exposed by other buildings - from one to one and a half per cent. per annum. Third Class - Houses

31. or stores connected with or exposed by other buildings, or like buildings built wholly of wood, standing alone and not exposed by other buildings - from one to two per cent. per annum. Fourth Class, Houses or stores built wholly of wood, connected with or exposed by other buildings - from one to three per cent. per annum. Fifth Class - Buildings, of any of the foregoing descriptions, when occupied as taverns - from one-sixth to one-third per cent. in addition to the foregoing rates. Sixth Class - Barns and stables, - from one to three per cent. per annum. Seventh Class - Bakeries, breweries, blacksmiths and tanneries - from one to three per cent. per annum. Eighth Class - Bookbinders, stationers, apothecaries, china, earthen and glass ware, and confectionary - from one and a half to four per cent. per annum. Ninth Class - Woolen, cotton and grist mills, driven by steam; steam engine manufactories, furnaces, soap and candle factories, carriage makers and joiners shops, and cabinet makers - from two to five per cent. per annum.

Sec. 3. Furniture and goods not deemed hazardous will be insured at the same rates with buildings in which they are contained.

Sec. 4. The following trades and merchandise are deemed hazardous, and additional pre-

miums will be charged upon their insurance, to-wit: rope makers, tanneries with fire-backing and bark mills, foundries, houses building or repairing, coopers, jewellers' stocks, painters' shops, tallow melters and chandlers, tobacco manufactories with kilns, turners, match factories, and such other trades and merchandise as the Directors may determine.

Sec. 5. In case of fire, or loss or damage thereby, or of exposure to loss or damage thereby it shall be the duty of the insured to use their best endeavors for saving and preserving the property, and it is mutually understood that there can be no abandonment to the Company of the subject insured.

Sec 6. Policies of insurance shall take effect at twelve oclock, noon, on the day of the approval of the application, at the office of the Company, and shall be binding thereafter.

Sec. 7. Ten per cent of the premium note shall be paid in all cases, and endorsed thereon, at the time of receiving a policy by the assured.

Sec 8. Insurance shall not be made to a greater amount than four thousand dollars on any one risk.

Sec 9. Whenever required in writing, the assured or person claiming, shall produce and exhibit his books of accounts and other vouchers to

33 the Directors, or their duly appointed Agents, in support of his claim, and permit extracts and copies thereof to be made.

Sec 10. In towns or settlements where there are no laws in existence regulating the keeping of gunpowder, members of this Company may keep for sale any quantity not exceeding twenty-five pounds, provided it be kept in tin or copper canisters, and kept at all times standing in a conspicuous place, easily accessible to any one on entering the room.

Sec 11 One dollar shall be paid for each policy, and fifty cents for every assignment and transfer.

Article IV.

Sec 1. These By-Laws may be altered from time to time, at any subsequent meeting of the Board of Directors, by a two-thirds vote, - provided that notice thereof be given at a previous meeting in writing.

Do A receipt for an assessment in 1863 as follows; St. Louis Decbr. 28th 1863.

Receipt for assmt. 1863.

Received Forty five 72/100 Dollars of Jacob Kern being Amount of Assessment No II ordered by the Board of Directors of the South St. Louis Mutual Fire & Marine Insurance Company Novbr 11th 1863. on Premium Note No 790

Ch. Fischbach for Treasurer.

34. 3d A receipt of Victor Vogel 31st March 1865 for assessment on said policy as follows:

Receipt of Victor Vogel for assmt. 1865

St Louis March 31st 1865

Received 45 — 100 Dollars of Jacob Kern being amount of Assessment No 3 ordered by the Board of Directors of the South St. Louis Mutual Fire & Marine Insurance Company Feby 24. 1865 on Premium Note No 790

Victor Vogel for Treasurer.

4th A notice of assessment of 24th February 1865, as follows.

Notice of Assmt.

Office
South St. Louis Mutual Fire & Marine Insurance Co.
St. Louis Feby 24 1865

Jacob Kern Esq.

You are hereby notified that an assessment of $45 100 has been ~~made~~ this day ordered by the Board of Directors upon your Premium Note No 790 payable at the office of the company, over the First National Bank, at the junction of Fifth Street and Carondelet Avenue, on or before the First of April next.

Respectfully
Victor Vogel
for Secy

N. B. Please to bring this Notice, or the number of your policy, when you call to pay.

35. 5th Plaintiff read in evidence to the jury his affidavit & the papers called proofs of loss as follows:

37. The defendant objected to the reading of said papers to the jury, but the Court admitted them & Defendant excepted.

6th. The plaintiff offered the charter of Defendant of 10th March 1859. in Evidence and it was considered as read, and the same is made part of this Bill of Exceptions & of the record in this cause as it is found in the Session Laws of the General Assembly of Missouri for the said year 1859.

p 69

Plaintiff thereupon gave testimony to the jury, tending to prove, that the fire happened on the 8th day of January 1864; that it was first discovered in the insured building, & in the yard adjoining, at about five o'clock in the morning; that a heavy snow was on the ground & the weather intensely cold; that the value of the insured building was ten thousand dollars & the value of the insured stock was ten thousand dollars — and both the building & the stock were destroyed by the fire; that the plaintiff gave notice and proof of loss according to the conditions of insurance, & delivered them to Defendant immediately after the fire; that when the building was insured it, was a brick building, used for a wagon manufactory & blacksmith shop —

38. That there were nine blacksmith fires, in the building used for blacksmithing, and the remainder of the brick building was used for wagon making; that there was a fire used in the yard on the north side of the building for heating wagon tires and sub irons; & that the fire happened from some unknown cause or was the act of an incendiary-

39. The Defendant gave evidence and testimony to the jury, as follows:

First. that the original application by plaintiff for insurance had been lost or mislaid, and that the following was a copy of it in substance:

Copy of Appn. for Ins.

South St. Louis Mutual Fire & Marine Insurance Co. of Saint Louis.

Application of Jacob Kern of St Louis in the County of St. Louis for Insurance against Fire by the South Saint Louis Mutual Fire and Marine Insurance Co. of St. Louis, Mo. for the sum of Five Thousand Dollars, viz:

On a 2 story Brickbuilding	$ 2500	Valued at ..... $
On Stock in Wagon Maker & and Blacksmith Shop therein	2500	
	$	
	$	
On Stock in trade consisting of goods, wares and merchandise usually kept in ..... stores	$ $5000	varying in amount from $ ..... to $ ..... At no less than the former sum.

Where situated? No. of lot. Block. Street &c. or No. of the Section and Quarter, Township, Range, &c.?	Said building is situated on the North west corner of 3d & Lombard Street Block 75 in the City of St Louis Mo.

40.

Of what Materials?	Brick
Dimensions on the ground?	About 60 – 150 feet
No. of Stories + Rooms in each?	2 Stories, 2 Rooms.
No. of Chimneys, fireplaces, and stoves, and whether the pipes enter brick chimneys or pass through wooden partitions? If so, how are they secured, and how near to wood work?	9 fires.
Purposes for which occupied?	Blacksmith & Wagon makers shop
Distances and direction from each other and from other buildings?	
North	2 Story Brick building adjoining
East	3rd Street
South	Lombard Street
West	a 20 feet alley
Amount insured by this office on property in the same exposure	None
Amount assured in other Companies	5000 in St. Louis Mutual Ins Co.
Whether water is near?	fire plug close by.
What is the title, and whether encumbered by mortgage, or otherwise, and to what amount	
How near to the building to be insured, or containing property to be insured,	
Can a building be erected without your consent?	

41. And the said applicant covenants and agrees with said company that the foregoing is a correct description of the property requested to be insured, as far as regards the risk on the same. The company will not be bound by statements made to the agent, not contained in the application. No lighted lamp or candle is allowed to be carried into a barn or stable, unless protected by a lantern. The ashes (if any) to be kept, at all times, in a safe deposit.

In Witness Whereof, The signature of the undersigned is hereunto affixed, this 28th day of November A.D. 1862

Jacob Kern

The Defendant then gave testimony tending to prove, that about six weeks before the fire, that consumed the insured premises, the plaintiff had erected or caused to be erected, a steam boiler with a furnace beneath it, of the length of twenty feet and of the heighth of about eight feet adjoining the north wall of the insured building, and that a wooden shed about thirty five feet long, fifteen feet wide & twelve feet high, had been erected to cover the said boiler ~~and~~ & furnace - that a gang of two saws had been erected at the Eastern end of said shed and under it for sawing the lumber for wagon making purposes; that a steam engine had been erected in the insured building, and the steam was supplied to said engine by a steam pipe, which had been

42. run through the brick wall from the steam boiler in the shed, to the steam engine in the insured building; that the saws were driven by the steam engine in the insured building; that there was an opening between the shed + the engine, where the saws were set up in the shed; that the steam engine had been run a few times for the purposes of trial, before the fire, that the saws had also been run a few times, to test their capacity for sawing, before the fire; that the shed covered the door in the north wall of the insured building, leading into the yard before the shed was built; that the door last mentioned leading from the insured building into the shed, was opposite to another door leading from the shed into the yard; that a fire had been built under the boiler and steam had been raised to run the engine in the said insured building + the saws, under the shed, and that the fire in the furnace under the boiler had been put out on the day or day before the fire which burned the insured premises; that the kindling wood + coal for running the engine was kept under the shed near the boiler; that the furnace under boiler was laid in stone + brick masonry + the door of the furnace was of iron + the floor of earth; that a stack of chimneys about six feet square, stood against the north wall of the insured building about eight feet east of the Eastern

43. end of the boiler; that the gangs of saws were east of the stack of chimneys; that the engine & boiler and saws had been erected for permanent use in the wagon making business; but that only a temporary use of them had been made before the fire, to try & test the capacity & working qualities of the Engine & the saws; that lumber had been piled in the yard near the shed and north of it; that the main body of the fire had been in the insured building near where the engine had been built; that a large fire had also been in the yard, at the time the premises were burned down; that the money paid by plaintiff for the said assessment of 1865, was received by the clerk of the Secretary of Deft. by mistake and when it was discovered to have been paid by the proper officers of Deft. the money so paid by Plff. was tendered to him by Deft and although Plff refused to receive it, the said money so paid by Plff on the said assessment of 1865, was deposited in the First National Bank of St Louis, subject to the order of Plff & has so remained there ever since

The Defendant also gave in evidence to the jury the by laws of Defendant which may be read to the Supreme Court as contained in the printed book of by laws appended to the pamphlet copy of the Charter of Defendant, without being copied into the record - marked H.

The Defendant also called as a witness John C. Vogel, who testified I have been an officer of an Insurance Company in the City of St Louis for twelve years past, and am familiar with insurance in mutual insurance Companies, and the rules of insurance

Deft thereupon put the following questions to said witness.

1st Question - State whether in your opinion the erection of the boiler & the location of the engine in the old building & the erection of a wooden shed over the boiler, created an additional hazard & required an additional premium to insure the old building:

The Plff objected to said question and Deft insisted it was competent and relevant, but the court excluded the same & Deft then & there objected & Excepted to the exclusion thereof.

45. 2d Question - Would a higher or a lower rate of premium, have been required or demanded, to insure the old building as it stood in 1862, without a boiler shed & boiler & furnace adjoining the wall of the old building then would have been demanded if the engine were already in the old building and the boiler furnace & wooden shed attached to or built up & erected on the East wall of the said old building.

The Pltff objected to this question & Deft insisted it was competent & relevant but the court excluded the same & Deft then & there objected & excepted

3d Question - Would it or not increase the risk upon the old brick building, to have an engine put in it. & a wooden Shed built against the east wall of it, with a furnace & boiler covered by the shed, which furnace and boiler were used to propel the engine in the old building and to drive saws outside of it.

The Pltff objected to this question & Deft insisted it was competent ~~and~~ & relevant, but the court excluded the same & Deft then & there objected & excepted.

4th Question - Would the shed & furnace & boiler adjoining the building outside and the engine inside if used, increase the risk or danger from fire?

The Pltff objected to this question & Deft insisted

46. it was competent and relevant but the court excluded the same and the Deft then & there objected & excepted.

5th Question

In your opinion as an expert would the addition of a wood shed to the old brick building covering a boiler & furnace used to drive or propel an Engine erected in the old brick building, by steam Power, increase or diminish the danger or risk from fire, to or in said old brick building?

The Pltff objected to this question & deft insisted that it was competent & relevant, but the court excluded the same & Deft then & there objected and excepted.

6th Question. Would the addition of a wooden shed to the old brick building covering a boiler & furnace used to propel a steam engine, erected in the old brick building by steam power and two saws outside of said old brick building by the same steam power increase or diminish the rate of premium of insurance, or the hazard or risk from fire?

The Plaintiff, objected to this question & Deft. insisted that it was competent & relevant, but the Court excluded the same & Deft then & there objected & excepted?—

7th Question

Would a higher rate of premium be

47. demanded to insure the old building after the engine had been put in and the boiler and furnace put outside and adjoining the building and a wooden shed erected over the boiler said engine & boiler being used with fire, than would have been demanded before said engine or boiler and shed being put there.

The Plaintiff objected to this question and defendant insisted it was competent and relevant; but the Court excluded the same and the defendant then & there objected and excepted.

The foregoing is all the evidence & proceedings & testimony in the cause, except the instructions, and the plaintiff asked & the court gave the following instructions;

Instructions for Plff.

The jury are instructed that no alteration or repairs made on the premises insured by the plaintiff would avoid his policy; nor can his recovery in this suit be defeated by means of any alteration or repairs unless the same was such as to increase the risk or hazard from fire to the insured premises.

That if the jury find from the evidence in

48. the cause that the defts made the policy sued on, that the property insured was destroyed by fire as stated in the petition of the plaintiff and that the plaintiff has complied with the agreements and conditions in the Policy contained and to be complied with on his part they will find for the Pltff.

The jury are instructed the policy sued on could not be made void nor can the recovery ~~be made~~ of the plaintiff in this suit be defeated by the erection of any building immediately adjacent or adjoining the premises insured unless such erection materially increased the risk or hazard of fire.

In the giving each of the said instructions the Deft then & there excepted & objected.

The Defts asked & the court gave the following instruction.

1st. Instructions for Defendant—

If any alteration was made in the building insured, by the plaintiff or his Workmen under his direction or with plaintiffs knowledge or consent; after insurance had been made thereon with Defendant; whereby the said building was exposed to greater risk or hazard from fire that it was at the time it was insured; then the policy sued on became void unless the plaintiff has proved to the satisfaction

49. of the jury that an additional premium and deposit after such alteration, was settled with and paid to the Directors or agent of said defendant, before the said fire happened.

Hill & Jewett
for Deft.

The Defendant also asked the following instructions, which the court refused to give:

Instructions No 2 & 3 Refused.

2d If the jury find from the evidence that the plaintiff after obtaining the policy sued on, caused a wooden shed to be erected adjoining the insured building & an engine to be put up in the insured building, to be propelled by steam from said boiler, that said boiler was heated by a furnace under it, that said engine was connected by a steam pipe with said boiler and also by bands with machinery for propelling two saws on the outside of said insured building & that a new brick building was erected adjoining the insured building, then the jury is instructed that such erection, machinery & connections, are an alteration of the insured building within the meaning of the 24th section of the Charter of Defendant.

Hill & Jewett
for Deft.

3d It is wholly immaterial in this case, how or from what cause, the fire happened, that

consumed the premises insured; and if the jury find from the evidence, that any alteration was made in the building insured, by the plaintiff, or his workmen, or agents under plaintiff's direction or with plaintiff's knowledge or consent; after insurance had been made thereon, with defendant, whereby the said building was exposed to greater risk or hazard from fire, than it was at the time it was insured; then the policy sued on became void & of no effect, and the jury will find a verdict for the defendant; unless the plaintiff has proved to the satisfaction of the jury, that an additional premium and deposit after such alteration, was settled with and paid to the Directors or agent of said Defendant before the said fire happened

Hill & Jewett
for Deft.

To the refusal of the court to give the foregoing instructions, the Deft. objected & excepted

The cause was thereupon submitted to the Jury & they found a verdict for the Pltff. — and thereupon & within four days the deft filed its motion by attorney for a new trial as follows:

51. Jacob Kern } Circuit
vs. } Court
South St. Louis } St. Louis
St. Fire & Marine Insurance Company } Co. Sept Term 1865

The Defendant moves the Court to set aside [illegible] verdict in the above entitled cause [illegible] trial for the following reasons:

[illegible] Court excluded evidence offered by the [illegible] ought to have been admitted

[illegible] court admitted evidence offered by Plff & objected to by Deft which ought to have been excluded.

3d The Court refused instructions offered by the Deft which ought to have been given

4th The Court gave instructions offered by Plff, which ought to have been refused.

5 The verdict was against evidence & the weight of evidence

6th The verdict was for Plff, when it it should have been for Deft.

Hill & Jewett
for Deft.

The Court overruled said motion for a new trial, and the Deft then & there objected & excepted.

And the foregoing are all the evidence, testimony & proceedings in said cause, and the same is made a part of the record as

52. witness the hand and seal of the Judge of said court in this same term of the trial of the cause

James C. Moody (Seal)
Judge.

State of Missouri
County of St Louis } S.S.

I. F. A. H. Schneider, clerk of the St. Louis Circuit Court, certify the above to be a true and complete transcript of the record & proceedings in the above entitled cause as fully as the same remain of record in my office. In testimony whereof I hereunto set my hand and affix the seal of said Court at office in the City of St. Louis this 28th day of February A.D. 1866.

F. A. H. Schneider Cl

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~~XX2~~ ~~224~~

43 ~~XX~~ 43

March Term 1867

(B)

Jacob Kern

Respon^t

Transcript

South St Louis Mutual

Insurance Company

Appellants

Appeal from St Louis Cir Ct

Glover & Shepley for Respt.

Hill & Jewett for Appellants

Filed March 31 1866.

O. T. Fillebach

A.M.

$27.00 Paid by appellant

$10 — [illegible]

1866 Mch 22 Assignment of Errors filed

1867 April 9 Arg & Sub

" " 10 Stmt & brief of Res filed

" " " " " " Ap "

" " 22 Reversed & Remanded

Jacob Kern Pltff Res.
4
The South St Louis Mut. Ins. Co. Dft Appll

IN SUPREME COURT
Mar TERM, 18 66
224.

AND now comes the said Appellant and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellant assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Plaintiff
2. That said Court rejected proper and legal testimony offered by Defendant
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by defendant
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the plaintiff when it should have been rendered for the Defendant
10. That said Court overruled the motion for a new trial, made by Defendant

Hill & Jewett
attys for Appll
Dft

And now come the respondent and for joinder in error say, that there is no error in the record and proceedings of said Court in said cause, as assigned by said appellant

Glover & Shepley
for Appll

224

Jacob Stern
Respdt

vs

South St Louis
Mutual Ins. Co
Apl

Assignment of Errors

Filed March 22/66
O. F. Filbach
Clk

Hill & Jewett for
Apl.

Jacob Kern Respondent
vs
South St Louis mut
Fire & marine
Insurance Co
Appellants

In Sup Court
Mon A T
1867

Statement of Case by
Glover & Schepley
for Jacob Kern

Sept 9. 1865 Kern sued the South St Louis mut F & M Ins Co on their policy dated Nov 28. 1862 insuring for six years a wagon makers shop and stock and black Smiths Shop situate on corner of 3rd and Lombard Sts St Louis for $5000 alledging loss by fire proofs of loss and full compliance with all stipulations of policy on the part of respondent.

The appellants answered and in December 1865 the cause was tried resulting in a judgment for Kern $5450.00

On the trial and after the proof had been partially heard the appellants filed an amend

ed answer on which the cause was tried. It stated in substance that after the execution of the policy: the insured had erected another building adjoining the one insured and placed in it a steam engine near the insured building and made an opening in the wall of the insured building and made a furnace for the engine &c so that by means of these alterations and additions the building and stock insured was exposed to much greater risk & hazard of burning than at the date of policy at which it was insured made the policy void, as provided by the conditions thereof and the charter of the company. That these erections changes and alterations were the immediate cause of the fire which produced the loss sued for.

The answer also denied that the respondent had complied with the terms of the policy.

It was agreed by the assured

" that in case there should be any building erected immediately adjacent or adjoining the above (the one insured) which shall materially increase the risk or hazard of fire that notice shall be given to the company immediately that on examination may be made by the agent or agents of the company and the rate of insurance increased or policy cancelled "

Record p 20

The company's charter contains the following viz sec 24. "If any alteration shall be made in any house or building by proprietor thereof after insurance had been made thereon with said company whereby it may be exposed to greater risk or hazard from fire than it was at the time it was insured then in every such case the insurance shall be void unless an additional premium ×× be paid ×× but no alterations or repairs ×× not increasing such risk or hazard ×× shall in any way affect ×× insurance "

December 28 1863 the respondent been paid to appellants $45.00 assignment of his premium note for the policy sued on also paid some amount for some purpose march 31/1865 ~~and~~

the notice of appellants to pay the last mentioned assessment was served on respondent Kern Feby 24/1865. The respondent made proofs of loss according to the policy

The appellants objected to reading of the proofs of loss and excepted to the opinion of the Court admitting them in evidence

The company's Charter was in evidence see Sess Acts of Genl Assembly 1859 Second part commencing Decbr 27/58 p 63 to 70 inclusive. The respondent also introduced evidence tending to prove that the fire happened Jany 8. 1864 was first discovered in insured building and yard adjoining

about 5 o clock in morning a heavy snow was on the ground weather very cold value of insured building was $10,000 Stock $10,000 and all destroyed by the fire that respondent gave notice and proofs of loss as required by his policy when building was insured it was a brick building used for wagon factory and black smith shop with nine black-smiths fires in Shop - remainder of insured building used for wagon making - and a fire used in yard on north side of building for heating wagon tires and Hub irons and the fire happened in some unknown way by act of incendiary.

The appellants offered in evidence Kerns application for insurance

also evidence of witnesses tending to prove that Kern after policy put up an engine and boiler furnace in the yard and made other alterations in things about the insured premises and tending to prove that thereby the risk was increased or diminished

also that the demand on Kern to pay the last call on his premium note was agreed by mistake and offered back to him and he refused to receive it. The appellants read in evidence their by-laws

They called to the stand John le Vogel who said he had been 12 years an officer in an insurance company and was familiar with insurance and the rules of insurance in mutual com-

policies.

He was then asked substantially whether the changes made by Kern in his opinion created additional hazard — and required additional premium? would a higher or lower rate or premium been required or demanded to insure old building in 1862 as it then was or as it was made to be after changes? and put sundry other questions intended to draw out witness opinion on facts supposed by the appellants to be proved

The court excluded the opinions of the witness as called for and exception was taken —

The court gave the following instructions for Kern — (1) The jury are instructed that no alteration or repairs made on premises insured by plfs would avoid his

policy nor can his recovery be defeated by means of alterations or repairs unless the same did such or to increase the risk or haz and from fire to the insured premises. That if the jury find from the evidence that defdt made the policy sued on and the property insured was destroyed by fire as stated in petition and pltff complied with the agreements & conditions in the policy to be complied with on his part they will find for the pltff—

(2) The jury are instructed that the policy sued on could not be made void nor can the recovery of pltff be defeated by the erection of any building immediately adjacent or adjoining premises insured unless such erection materially increased the risk or haz and of fire. To the giving of each of said instructions defdts except

The court gave the following instructions for appellants.

If any alteration in the building insured was made by plaintiff or under his direction or with his knowledge or consent after insurance made with defts whereby said building was exposed to greater risk or hazard from fire than when insured then policy became void — unless plaintiff has proved to satisfaction of jury or additional premium deposit after such alteration was settled with and paid to defts or agent before the fire happened

The court refused the following instructions asked by appellants

(1) ~~If the jury find from the~~

evidence that plaintiff after obtaining policy sued on caused a wooden shed to be erected adjoining insured building and an engine to be put up in it to be propelled by steam from said boiler and said boiler was heated by a furnace under it and said engine was connected by a steam pipe with said boiler also by bands with machinery for propelling two rows on the outside of the insured building and a new brick building was erected adjoining the insured building then the jury is instructed that such erections machinery and connections are an alteration of the insured building within meaning of 24th section of charter of defts

(2) It is wholly immaterial in this case how or from what cause the fire happened that consumed the premises insured, and if the jury find from the evidence

that any alteration was made in the building erected by pltff or his workmen or agents under his direction or with his knowledge or consent after the insurance made thereon with defts whereby said building was exposed to greater risk or hazard from fire than it was when insured then the policy sued on become void and of no effect and the jury will find a verdict for defts; unless the plaintiff has proved to the satisfaction of the jury that an additional premium and deposit after such alteration was settled with and paid to the defts —

Points & authorities by Geover & Shepley for Jacob Kern

(1) The case was submitted to the jury on the question were the alterations that were made in the conditions of the property insured such as increased the risk or hazard of loss from fire or not — If they were the policy was avoided otherwise not — This was the theory on which the case was tried by both parties: and the court was so requested to instruct. The jury found the issues for the plaintiff.

(2) This Court will not reverse the finding of the jury under such

circumstances

(3) The court properly over-ruled the questions propounded to the witness Vogel touching his opinion The opinion was not evidence in any respect of the case 7 Wend 77 Jefferson Ins Co v Cotheal 2 Ohio St 452 Protection Ins Co v Harris 4 Denio 311 Fitch v Dodge 45 Maine 170 Joyce v Maine Ins Co

(4) The defts instruction no 1 refused by the court could not be given because was intended to convey to the jury the idea that the allegations mentioned therein avoided the policy

(5) The deft's 2nd instruction refused was already given for the defendants in substance and for the pltffs

(6) The appellants have raised a question here not started in the court below. One of the conditions of the policy provides that "no change of the building insured xx shall be made by repairs additions repairs or otherwise without the consent or approval of the President of the company in writing before making such change xx "and until the change shall be approved" xx the policy to be of no effect"

The appellants now insist the policy is void under this condition ~~[illegible]~~

The contract expressly refers to the conditions of insurance — the act incorporating the company and the by-laws of the company and makes them all part of the policy.

The charter which is part of the policy says "no alteration or repairs not increasing the risk" shall in any wise affect the the insurance.

There is a conflict between the clauses of the contract — This confusion is attributable to the company. And the construction should be favorable to the insured.

But the company waived this point in the court below. The appellants conceded that no change or alteration not increasing the risk would affect this policy. They can not now complain of this

errors committed on their own motion — conditions are strictly construed against those for whose benefit they are made.

The company had no power to make any condition in contravention of their charter. 1 Sumner C.C. 434 Collins v Springfield Fire Ins Co

There was no proof that no notice was given to the company of the changes, and the burden of showing this was on the company 3 Welsby Hurlst & Gordon p 542 side p —

No 6

Jacob Kern

v

The South
St Louis
Pri Comp'y

Statement
points & are
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Geoord Shelby

Filed April 10 1867
O T Fishback Clk
per E M Carty Dep

Jacob Kerr
respondent
vs
South St. Louis Ins Co
Appts

Supreme Ct
March 7. 1867

Statement of case by Hill & Jewett for Appts

The Plff took out a policy in this case & became a member of the Defts company on the 25th of Nov 1862 - The insurance effected was to the amount of five thousand dollars ~~on~~ - 2500 on a two story brick building & same sum on stock in Wagon Maker & blacksmith shop therein situated, on the north west corner of third & Lombard streets in St Louis

The property was burnt January 8th 1864 - Due notice was given to Defts & proof of loss made.

The Defts set up in answer to the petition, that after the insurance & without the knowledge or consent of Defts, the Plff erected a wooden building or shed next & adjoining the brick building & set up a steam boiler ~~engine~~ in it & put the engine & gearing in the brick building - & run the steam pipe through the wall & had or made openings connecting the boiler room with the engine inside the building & erected a stack of chimney for the pressure, close & adjoining the building insured

That the erection of the engine & boiler & the connection of them in that way increased the risk & hazard of fire - thereby forfeiting the policy, & that the changes thus made were such an alteration in the building as avoided the policy. There was also erected by Pltff after the insurance, & without notice, a new brick building adjoining the one insured & connected with it, in which was stored materials for making waggons -

The Pltff put in evidence the policy - the charter & bylaws of Defts & made proofs of loss & notice. - The policy refers to the act of incorporation of the company - dated March 10th 1859 - The policy was for six years, & makes the condition of insurance, the act of incorporation & the by laws, a part of the policy.

The policy says - "It is agreed by the assured that in case there shall be any building erected immediately adjacent or adjoining the above described building which shall materially increase the risk or hazard of fire, that notice shall be given

the company immediately, that an examination can be made by the agent or agents of the company & the rate of insurance increased, or the policy cancelled at the option ~~of the company~~ either party".
(Record p. 20.)

The conditions of insurance say. (Record p. 23) "If during the insurance the risk is increased by the erection of buildings or by the use or occupation of neighboring ~~buildings~~ premises, or otherwise, or if for any other cause the Directors shall elect, it shall be optional with them to ~~estimate~~ terminate insurance after notice is given to the assured or representative of their intention so to do."

Another condition says — "It is further agreed that no change of the building or buildings herein insured, or in which property is insured by this company, shall be made by repairs, additions or otherwise without the consent or approval of the President of the company in writing before making such change. Any breach or violation of this provision shall render this policy of no effect during such change until such change shall be approved by the President or directors". (Record p. 25)

It appeared in evidence that the engine had been run for the purpose of trial & to get it in working order, before the fire, but the fire under the boiler had been put out a day or two before the fire. The fire was early in the morning & was first seen in the building insured & in the yard adjoining. That about six weeks before the fire the wooden shed was erected about 20 feet long & eight or ten high adjoining on the insured building, & under this the boiler & furnace was put & the engine set up inside the insured building, the steam pipe running through the wall — a gang of two saws was also under the shed, run by the engine — There was a door in the north wall of the insured building, opening into the shed. The testimony is more fully reported in the Record pages 41-2-3.

The Defts called John B Vogle (who testified that he had been an officer of an Insurance Company in St. Louis for 12 years & was familiar with insurance in Mutual Ins. Coys. & the rules of Insurance) & asked him. 1st — That whether in your opinion the erection of the boiler & the location of the engine in the old building & the erection of a wooden shed over the boiler, created an

additional hazard & required an additional premium to insure the old building?

This question was objected to by Plff & ~~excluded~~ excluded by the Ct. & the exclusion excepted to.

The question was also asked simply as to whether such change would require ~~an additional~~ higher rate of premium. — And that question was excluded —

Also the question as to whether or not such change, in his opinion, increased the risk: & that was excluded, & excepted to. These questions & others are found on pages 44-5-6 of the Record.

Defs instructions given & refused — See Record pages 47-48-49-50.

The jury returned a verdict for Plff.

Defts filed in due season a motion for new trial, which motion was over-ruled — appeal taken & allowed & bill of exceptions filed & allowed

Supreme Court of Missouri
March Term A.D. 1867 — No. 51 —
Jacob Kern Plff. Res —
vs. —
The South St Louis Mutual Fire and Marine Insurance Company, Deft. Appelt.

Brief for appelts —

Point. 1st The insurance was effected in 1862 by the plaintiff with the defendant for twenty five hundred dollars on a two story brick building — and twenty five hundred on stock in wagon maker and blacksmith shop therein — Brick building situate on North West Corner of Third and Lombard Street St Louis two stories high. —

On the 8th of January 1864 the building and stock were destroyed by fire which broke out in the insured building and the yard adjoining. — About six weeks before the fire the plaintiff had erected a steam boiler with a furnace beneath it twenty feet long and eight feet to the top of the boiler adjoining the North wall of the insured building — And plaintiff at the same time erected a wooden shed about thirty five feet long fifteen feet wide and twelve feet high to cover the said boiler and furnace and a gang of two saws set up at the Eastern end of said shed for sawing

lumber for wagon making purposes. And a Steam Engine had been erected in the insured building and the steam was supplied to said Engine by a Steam pipe which was run through the brick wall of the insured building from the Steam boiler in the Shed to the Steam Engine in the insured building and the Saws in the Wooden Shed were driven by the Steam Engine there recently erected in the insured building. And the Engine and the Saws had been run ~~and~~ a few times before the fire and the fires which had been built under the furnace had been put out the day before the destruction of the building. The Kindling wood and Coal for running the Engine were kept under the Shed near the boiler. The Stack of Chimneys belonging to the furnace and the Wooden Shed were attached to the North wall of the insured building and covered the openings in the said North wall.

By the Conditions of insurance (Record page 25). All repairs and additions are prohibited in buildings insured or containing property insured unless the Consent or Approval of the President of the Company in writing be obtained before making such change

a breach of this provision renders the policy of no effect during such change and until such change shall be approved by the President or Directors

(a) The instructions given by the court for the Plaintiff is directly in conflict with the said condition of Insurance, and is grossly erroneous. Francis vs Somerville Mutual Insurance Company 1 Dutch. N.J. 78. Gardner vs Rockaway Insurance Company 38 Maine 439. Curry vs Commonwealth Insurance Co. 10 Pickering 535. Reed vs Gore Mutual Ins Co 11 Queen Bench Upper Canada 345. This provision against an increase of Risk by act of assured in altering or adding to the building insured is not controlled or limited by the previous condition or specification of hazards: But is an independant condition of itself and although the particular alteration, addition or change was not included in said classes of hazards yet if it increased the risk the policy is thereby avoided. Boatwright vs Etna Ins Co 1st Strobhart S.C. 281

Point 2nd

In the case of Gardner vs Piscataquis Ins Co 38 Maine 439 the court held that when a clause requiring any notice of alteration is inserted in the policy, then ~~and~~ in case of increase of risk without notice, the policy shall be avoided. And the burden of proof of this notice is on the assured ~~and~~ and it is wholly immaterial whether the loss happened in consequence of such increased risk or not.

Erection of a steam engine in a Water Mill if it increases the risk avoids the policy, and notice of the fact to the agent of the Company could not be proved by evidence of conversation with third parties concerning it. Knowledge of the fact by the agent did not affect the company with knowledge. Sikes vs Perry Co Ins Co 34 Penn. St. R 79. (1859) 7 Wendell 77 Dutz vs The Mercantile City Mut Ins Co 38 Mo. 90

Point 3d — The instructions given by the Court for the pltff are directly in conflict with the said condition of insurance, (p 25 of Record) and that condition is made a part of the policy. (Record p 20)

It is wholly immaterial whether the alteration, addition or change is made ~~with~~ so as to increase the risk or not. The Deft has required the pltff by his contract, to give notice of all & every alteration, addition or change in the insured premises, and obtain the approval of the President of the Co in writing, before the change is made; & a violation of this condition avoids the policy.

Dietz vs The Mound City Mut. Ins. Co. 38 Mo. 90.

Pltff being a member of this Corporation, has wilfully violated his contract, by changing altering & adding to the brick building insured, without notice to Deft. It is not pretended that Pltff even gave the notice required to Deft.

The shed 35 feet long, fifteen (15) feet wide, & (12) twelve feet high, enclosing the boiler & two saws & furnace was made adjoining the north wall six weeks before the fire & an Engine was built in the insured building to be driven by the steam boiler in the shed, & to run various kinds of machinery including two gangs of saws in the shed, or wooden building adjoining the brick building insured

The Pltff insists that this question was not raised on the trial in this case. Deft insists that the three instructions given for the Pltff expressly raise the question & they are erroneous, in view of the policy which was considered read & the answer is broad enough to raise the question and so is the motion for a new trial & the assignment of errors — I have a clear recollection that the policy was considered as read & not read or produced on the trial. It was lost then as the papers were lost on this argument.

This Court is to decide the cause on the record & consider the errors assigned & the record & upon the face of the record the judgment must be reversed — This point cant be overlooked on the face of this record.

Point 4th

The Court below further erred, in refusing to permit the questions to be put to the ~~they~~ underwriters as experts, as to the increase of risk & increase of premium, by erecting the steam saw mill in the insured premises & the wooden Mill adjoining the insured building.

Underwriters are experts in such cases Schenck vs Mercer Co. Mut Ins Co. 4 Zabr N.J. 447 – 451. 1 Greenlf Ev. §440. Hartford Prot. Ins Co. vs Harmer 2 Ohio St. 22 Ohio 452

The case of Webber v Eastn R.R. Co. 2 Met 147 (Mass) expressly approves this doctrine, of experts.

In Merriam v ~~Middlesex~~ Middlesex Mut Fire Ins Co. 21 Pick (Mass) 162 it was held that if a higher rate of premium would have been demanded to insure the building in its altered state, than would have been demanded before then the policy is avoided.

In Boatwright v Aetna Ins Co. 1 Strobhardt S. Car 281, the Court held that the provision against increase of risk by any means, was independent of the specification of hazards & altho. the act done was not specified in the classes of hazards, yet if it increased the risk, the policy was thereby avoided

So in Murdock's case 2 Comstock N.Y. 210 overruling Stebbins v Globe Ins Co. 2 Hall 632.

So in Commonwealth Ins Co. and Carey 10 Pick. (Mass) 535 — & in Reed v Gore Ins Co 11 Upper Canada Banco Reginae p 535. it was held that putting up a steam engine in a frame building increases the risk as a matter of law.

So in regard to notice of alteration see case in point Gardiner v Piscataquis Mut F. Ins Co. 38 Maine 439.

In case of Francis v Somerville Mut. Ins Co. 1 Dutch N.J. 78, the verdict of a jury for plff was set aside, in case of a frame

addition 12 X 14 feet being put up adjoining a brick store, into which hay was put to feed a cow - The instruction was given that if risk was increased the assured could not recover - Held to be good law & verdict to the contrary was set aside as wholly unsupported by the evidence.

In Sykes v Perry Co Ins Co. 34 Penn St. (1859). p 79, the Court held, that the erection of a steam engine in a water mill, if it increased the risk avoids the policy; and notice of the fact to the agent of the Company, could not be proved by evidence of conversations with third parties of it. Knowledge of the fact by the agent did not affect the Company with notice Express notice to the agent would do so.
See also 7 Wendell 77.

Girard Fire & Marine Ins Co v Stephenson. 37 Penna St. 293.

Leadbetter v Aetna Ins Co. 13 Maine 265

Curry v Commrl Ins Co 10 Peik 535

Stetson v Mass Mut Ins Co. 4 Mass 330.

Jones Manufacturing Co v Manufacturers Mut Ins Co. 8 Cush (Mass) 82

Question on this point. How can the rate of premium, be determined upon the building insured & upon the Steam Saw Mill added to it, without calling upon the underwriters as experts to determine it.

No one ~~esta~~ else can be called, upon that question, so that the issue must be determined without testimony as a question of law, or left broadcast to the jury without evidence if the underwriter is excluded. The operations of underwriters are coextensive with the commerce & civilization of the world. The tables of premiums, of rates of hazard & of classifications of hazards, require the study of years to master. Underwriters are persons having professional skill in underwriting, and they are quite as much entitled to be called experts, as gentlemen of other professions. Insurance has grown to enormous proportions as the statistics of the world prove. It has become the science of risks & premiums and has its rules, its tables & professors. Men devote their lives to this profession or calling & become expert therein.

The 24th Sec. of the Charter of the Company p 69, expressly authorizes the enquiry proposed by Deft and excluded by the Court. It requires the jury to pass upon the rate of premium & if the new saw mill in the wooden house increased the rate of premium, upon the brick house, then the Pltff cannot recover. See cases cited & the 24th Sec.

But the Court below refused to give an instruction, calling upon the Court to declare the law to be, under the 24 Sec of the Charter, that the erection of a steam

saw mill in & adjoining the brick ~~brick~~ building was an alteration. See refused instructions — This is grop error.

The very question at issue is, whether the alteration would increase the risk, or the rate of premium on the insured building, and the Court below refused to instruct the jury, that the erection of a steam saw mill in a wagonmaker & blacksmith shop, was an alteration. This is grop error.

5th The rates of hazard Art 3 Sec 2 of By-laws, show that mills driven by steam are insurable at 2 to 5 pr cent per annum while bakeries blacksmithshops &c are insurable at one to 3 pr cent premium.

Upon the face of this contract for insurance the steam saw mill should be held as a question of law, to have increased the rate of premium.

See cases cited —

6th The verdict cannot be supported on this ~~#~~ point in the case. There is no conflict in the testimony. Six weeks before the fire this saw mill was introduced into this building, and a wooden building for the boiler & saws & furnace was erected & operated a few times before the fire. All the testimony harmonizes

upon this proposition & no evidence of notice to Deft was given.

No sane man can say upon this evidence that the risk & danger from fire, is not in-
-creased and the verdict of the jury should be set aside as wholly in conflict with all the evidence & without one spark of testi-
-mony to support it.

We ask therefore that the judgment be reversed & the cause remanded.

Walter A. Hill
for Hill & Jewett

No 51 Mar T. 1867

Supreme Court

Jacob Kern Pltff
Res

v

The South St. Louis
M. F & M. Ins Co
Appltts

Statement of
case & Brief
by Hill & Jewett
Attys for Dept

Filed April 10. 1867
O T Fishback clk
per E M Carty Dep

Part of Record

CHARTER AND BY-LAWS

OF THE

SOUTH ST. LOUIS MUTUAL

Fire & Marine Insurance Comp'y.

CHARTERED MARCH 10, 1859.

ST. LOUIS:
GEORGE KNAPP & CO., PRINTERS.
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AN ACT

TO INCORPORATE THE

SOUTH ST. LOUIS MUTUAL FIRE & MARINE INSURANCE CO.

Be it enacted, by the General Assembly of the State of Missouri, as follows:

Section 1. That J. B. Decker, John Schmidt, Christian Ploeser, Frederick Hohenschild, Frederick Heidacker, Francis Saler, Christian Mehl, Henry Kattleman, Brannock Jones, B. Shmees, Christian Staehlin, and F. W. Cronenbold, and all other persons who may hereafter become members of said Company in the manner herein prescribed, be and they are hereby incorporated and made a body politic, for a term of twenty-five years from the passage of this act, by the name of the South St. Louis Mutual Fire and Marine Insurance Company, for the purpose of insuring their respective dwelling-houses, stores, shops, and *their* buildings, household furniture and merchandise, steamboats, hulls, barges, flatboats, and cargoes, against loss or damage, whether the same shall happen by accident, lightning, or any other means, excepting that of design in the assured, or by the invasion of an enemy, or insurrection of the citizens of this or any other State of the United States; and by that name may sue and be sued, plead and be impleaded, appear, prosecute and defend, in any court of record or any place whatever; may have and use a common seal; may purchase and hold such real and personal estate as may be necessary to effect the object of their association, and sell and convey the same at pleasure,—provided such real estate shall not exceed one block of ground in the city of St. Louis, or sixty acres outside of the city limits; may make, establish, and put into execution, such by-laws, ordinances and resolutions, not being contrary to the laws of this State or of the United States, as may seem necessary or convenient for the regulation and government and for the arrangement of their affairs, and to do and execute all such acts and things as may be necessary to carry into full effect the purposes intended by this act of incorporation.

Sec. 2. That all and every person or persons, their heirs, administrators or assigns, who shall at any time become interested in said Company by insuring therein for a term of not less than two years, shall be deemed and taken as members thereof for and during the aforesaid term and no longer, and shall at all times be included and bound by the provisions of this act.

Sec. 3. There shall be a meeting of said Company at St. Louis on the first Saturday of March annually, or on such other day as the said Company may hereafter prescribe; at the first annual meeting shall be chosen, by a majority of the votes of the members and by proxy, a Board of Directors consisting of not more than fifteen nor less than nine members, who shall continue in office until others have been chosen and accepted the trust in their stead. In all vacancies happening in said Board, whether by removing from said county of

St. Louis, dying, refusing or neglecting to act for and during the space of three months successively, then and in every such case another Director shall be chosen in the place of each Director so removing, dying, or refusing or neglecting to act as aforesaid, by a majority of the Directors present at any monthly meeting, which Directors so chosen shall remain in office until the next general election for Directors; and a majority of the whole Board shall constitute a quorum for the transaction of business. At their first regular meeting the Board of Directors shall class themselves by lot into three classes, of an equal number each, the terms of whose service shall respectively expire as follows—the first class in one year, the second class in two years, and the third class in three years. Special meetings of the Company may be called by the Directors, or whenever one-third of the members of said Company shall apply to the Directors, setting forth in writing the purposes for which a meeting is called.

Sec. 4. The Board of Directors shall superintend the concerns of said Company, and shall have the management of the funds and property thereof, and of all matters and things thereto relating not otherwise provided for by said Company. They shall have power from time [to time] to appoint a Secretary, Treasurer, and such other officers, agents and assistants as to them may seem necessary, and prescribe their duties, fix their compensation, and to take such security from them as they may deem necessary for the faithful performance of their respective duties. They shall determine the rates of insurance; the sum to be insured on any building or personal property not to exceed two-thirds of its value, and the same to be deposited for the insurance thereof. They shall order and direct the making and using of all policies of insurance, the providing of books and stationery and other things needful for the office of said Company and for carrying on the affairs of said Company, and may draw upon the Treasurer for the payment of all losses which may have happened and for expenses incurred in transacting the business of said Company. They shall elect one of their own number to act as President, and may hold their meetings monthly, and oftener if necessary, for transacting the business of said Company, and shall keep a record of their proceedings; and any Director disagreeing with a majority of the Board, at any meeting, may enter his dissent, with his reasons therefor, on record.

Sec. 5. The Directors may extend the insurance of said Company to every part of the United States, and on all the personal and real property within the same, with the exceptions and provisions hereinafter enacted, not exceeding the sum of ten thousand dollars on any one risk, at such rate or rates as said Directors may determine, as hereafter provided.

Sec. 6. In all cases where application is made for insurance of either real or personal property, the President, or in his absence any of the Directors or the Agent of said Company, shall personally view the condition of the property offered for insurance, and the said President or Directors of the said Company shall determine the value of the property offered for insurance and the rate of insurance thereon only according to the condition of the property viewed as aforesaid: Provided, that if, in case of any loss or damage by fire, difficulties should arise as to the value of the property so damaged or destroyed at the time of the happening of such loss or damage, the value of said property may, at the option of the assured, be determined by the award of referees; which referees shall be impartial and disinterested householders in the city of St. Louis, and one to be chosen by said Company and one by the party assured, which two arbiters, so chosen, may call in an umpire if necessary; the award of the referees, chosen as aforesaid, shall be conclusive and binding on both parties, and no recourse or appeal shall be allowed therefrom.

Sec. 7. In case the award rendered by the arbitrators, as provided in the foregoing section, shall be more than the amount determined by the Directors, the said Company shall pay all expenses accruing from the valuation as aforesaid; but if the sum determined by the arbitrators shall not exceed the amount allowed by the Directors, the party assured shall suffer all costs accompanying such valuation by arbitrators.

Sec. 8. Each arbitrator shall receive two dollars per day as a compensation for his labors and time: Provided, that if the said arbitrators shall not agree upon the value of the property destroyed, or the amount of damage sustained, by fire, within three days from the day of their appointment, the said arbitrators may be discharged and others selected according to the provisions of section six of this act of incorporation.

Sec. 9. Books of account, written security or evidence of debt, title deeds, manuscripts or writings of any description, money, or bullion, shall not be deemed nor taken to be objects of insurance in said Company. Curiosities, jewels, medals, musical instruments, plate, paintings, sculpture, statuary, watches, gold or silver ware of any kind, shall not be deemed to be included in any policy of insurance unless those articles, or any of them, form part of the usual and regular stock in trade of the assured, or are particularly specified in the policy.

Sec. 10. Every person effecting insurance in said Company shall, before he receives his policy, deposit his promissory note for such sum or sums of money as shall be determined by the Directors, a part (not exceeding ten per centum) of which note shall be immediately paid for the purpose of discharging the incidental expenses of the Institution, and the remainder of said deposit note shall be made payable in part or in whole at any time when the Board of Directors shall deem the same requisite for the payment of losses or other expenses; and, at the expiration of the term of insurance, the said note, or such part of the same as shall remain unpaid, after deducting all losses and expenses occurring during said time, shall be relinquished and given up to the signer thereof.

Sec. 11. That, in all cases where personal property is to be insured in said Company, the deposit note, as provided for by section ten, shall be endorsed, and the payment of the amount of said note secured, by a good and responsible person. The President or Directors of said Company shall be deemed competent judges of the security offered as aforesaid.

Sec. 12. Every member of said Company, or person insured therein, shall be and hereby is bound to pay his proportion of all losses and expenses happening or accruing in and to said Company; and all buildings insured by and with said Company, together with the right, title and interest of the assured to the lands on which they stand, shall be pledged to said Company, and the said Company shall have a lien thereon until all the assessments duly made for losses and expenses, in conformity to the provisions of this act, shall be fully paid.

Sec. 13. That if any person or persons who are or shall become members of said Company by effecting insurance therein as provided for in section two of this act, their heirs, executors, administrators, assigns, or securities, shall neglect or refuse the payment of any assessment or assessments duly ordered by the Directors of said Company, for the term of thirty days after the same shall have become payable, agreeably to public notice by the Treasurer, the party so in default [shall] be excluded and debarred, and shall lose all benefit and advantage of his, her or their insurance respectively for and during the term of such default or non-payment, and, notwithstanding, shall be liable and obliged to pay all assessments that shall be made during the continuance of his, her or their policies of insurance.

Sec. 14. In case it shall be necessary to resort to the lien on the property insured, the Treasurer shall demand payment of the assured or his legal representatives, and of the tenant in possession; and in case of non-payment said Company may sustain an action on the deposit note and their execution may be levied on the insured premises, and the officer making the levy may sell the whole or any part of the estate at auction, giving notice and proceeding in the same manner as is required in sales under execution, or may proceed in equity, at the option of the Company; and the affidavit of the person demanding payment of any assessment, naming the day and manner of making such demand, shall be sufficient evidence in all courts of law and equity of such demand having been duly made,—provided that, in case the insurance was effected on personal property, the action above referred to may be sustained against the maker and endorser of the deposit note; and the execution may be levied on any property of such maker or endorser, subject to execution under the statutes of this State.

Sec. 15. In case of any loss or damage by fire happening to any member or person insured in said Company, upon property insured therein, the said member or person shall give notice thereof in writing to the Directors or some one of them, or to the Secretary or Agent of said Company, within thirty days from the time such loss or damage may have happened, and the Directors, upon a view of the same, or in such other way as they may deem proper, shall ascertain and determine the amount of loss or damage; and if the party suffering is not satisfied with the determination of the Directors, the question may be submitted to referees as provided by sections six, seven and eight of this act, or the said party may bring an action against said Company for the said loss or damage; and if, upon trial of said action, a greater sum shall be recovered than the amount determined by the Directors, the party suffering shall have judgment therefor against said Company, with interest from the time said loss or damage became due and costs of suit; but if no more shall be recovered than the amount adjudged by the Board of Directors, the said party shall recover no costs in said suit, and shall be adjudged to pay the costs of said Company, which shall be deducted from the amount recovered.

Sec. 16. That in all suits by or against said Company any member or person insured shall be a competent witness, except such suits in which he or she shall be directly a party,—provided that such person shall not be otherwise disqualified.

Sec. 17. The records of said Company, or copies thereof duly authenticated by the signatures of the President and Secretary, under the seal of said Company, shall be competent evidence in any suit in which said Company may be a party.

Sec. 18. The Board of Directors, in order to settle the losses sustained by fire and the expenses of this Company, shall be empowered to make, at convenient times and as often as they may deem it necessary, an assessment or assessments wherein they determine the sum to be paid by the several members of this Company, or persons insured therein, as their respective proportion of any assessment, and publish the same in such manner as they shall see fit or as the by-laws may prescribe; and the sum to be paid by each member shall always be in proportion to the original of his premium note or notes, and shall be paid to the Treasurer within thirty days next after the publication of said notice; and if any member or person insured shall for the space of thirty days after such notice neglect or refuse to pay the sum assessed upon him as his proportion of any sum as aforesaid, in such case the Directors may sue and recover the whole amount of his deposit note or notes with costs of suit.

Sec. 19. That in case where real or personal property insured by said Company shall become alienated by sale, by change in partnership or ownership, or otherwise, the policies issued thereon shall be void, and shall be surrendered to said Company to be cancelled; and said Company shall not be liable for any loss or damage which may happen to any property after such alienation as aforesaid unless the policies issued thereon shall have been duly assigned, or confirmed, by the consent of the Directors, to the actual owner or owners thereof previous to such loss and damage; and no policy issued by said Company shall be deemed to have been duly assigned or confirmed unless the consent of the Directors to such assignment or confirmation is certified on such policy by the Secretary of said Company.

Sec. 20. And if it ever shall happen that the whole amount of deposit notes shall not be sufficient to pay the loss occasioned by any one fire, in such case the sufferers insured by said Company shall receive towards making good their respective losses a proportioned dividend of the whole amount of said notes according to the sums by them respectively insured, and, in addition, a sum to be assessed on all the members of said Company, or persons insured therein, not exceeding forty cents on every one hundred dollars by them respectively insured; and the said members or persons insured shall never be required to pay for any loss occasioned by fire more than fifty cents on each one hundred dollars insured in said company in addition to the amount of his deposit note, nor more than that amount for any such loss after his said note shall have been paid in and expended; but any member, upon payment of the whole of his

deposit note, and surrendering his policy before any subsequent loss or expense has occurred, may be discharged from said Company.

Sec. 21. Said Company may make insurance for any term not less than one month nor more than ten years, and for the convenience of shippers may issue open policies as is usual in other Insurance Companies; and any policy of insurance issued by said Company, signed by the President, countersigned by the Secretary, and sealed with the seal of the Company, shall be deemed valid and binding on said Company in all cases wherein the assured has a title in fee simple unencumbered to the building or buildings insured, and to the land covered by the same; but if the assured have a lease estate therein, or if the premises be encumbered, the policy shall be void unless the true title of the assured and the encumbrances be expressed thereon.

Sec. 22. The Directors shall settle and pay all losses and damages ninety days after the determination of such loss or damage as aforesaid, unless they shall judge it proper within that time to rebuild the house or houses destroyed, or repair the damages sustained, which they are empowered to do in convenient time,—provided they do not lay out and expend in such building or repairs more than the sum determined by the Directors, or awarded by the arbitrators, or adjudged by the court; but no allowance is to be made in estimating damages, in any case, for gilding, historical, landscape or other ornamental painting, stucco or carved work, nor are the same to be replaced if destroyed by fire.

Sec. 23. If any member or party insured in said Company would prefer to draw the amount of his losses at the time of the determination of such losses or damages rather than to wait until the expiration of the ninety days provided for in the foregoing section of this act of incorporation, the President of said Company may draw upon the Treasurer of the Company for the amount remaining after deducting the lawful interest for the benefit of said Company.

Sec. 24. If any alteration shall be made in any house or building by the proprietor thereof after insurance has been made thereon with said Company whereby it may be exposed to greater risk or hazard from fire than it was at the time it was insured, then and in every such case the insurance made upon such house or building shall be void unless an additional premium and deposit after such alteration be settled with and paid to the Directors or Agent of said Company; but no alteration or repairs to buildings not increasing such risk of [or] hazard shall in anywise affect insurance previously made thereon.

Sec. 25. In case any building or buildings situated on leased land and insured by said Company be destroyed by fire and the owner or owners thereof shall prefer to receive the amount of said loss in money, in such case the Directors may retain the amount of the premium note given for the insurance thereof until the time for which insurance was made shall have expired; at the expiration thereof the assured shall have a right to demand and receive such part of such retained sum or sums as has not been expended in losses and assessments.

Sec. 26. If insurance on any house or building or any other property shall be and subsist in said Company and in any other office, or from and by any other person or persons, at the same time, the insurance made in and by said Company shall be deemed and become void unless such double insurance subsist by and with the consent of the Directors, signified by endorsement on the back of the policy.

Sec. 27. The Company hereby created shall not be concerned in trade or other business except the insurance of property against loss or damage by fire or otherwise as specified; nor shall said Company, by any possible construction of the power granted in this act, exercise any banking privileges whatever; but this act shall be deemed and taken to be a public act, and shall be liberally construed to effect the ends and purposes hereby intended and contemplated.

Sec. 28. The Board of Directors of said Company shall hereby be empowered to make an assessment or assessments as often as they deem it necessary to meet the liabilities of such Company, and such assessments shall in all cases be made payable within thirty days after the publication and notice, and such assessment may also include all the necessary incidental expenses.

Sec. 29. Each and every member shall be entitled to and allowed an examination of the books, papers, and general transactions of said Company upon application therefor to the Secretary.

Sec. 30. It shall be the duty of the Directors to make an annual report of the condition, progress and affairs of the said Company to the annual meeting of the members of said Company.

Sec. 31. The Directors of said Company shall have power to appoint Agents for all parts of the State and the United States, for such length of time, and to grant such powers to them as said Directors may see fit,—provided such powers shall be in accordance with the laws of the respective States wherein such Agents are to be appointed,—and provided, also, that such Agents have to qualify themselves according to, and to comply with, the laws of their respective States.

Sec. 32. Powers to vote by proxy shall be in writing; shall state the name of the person authorized to cast the vote; shall contain the name or names of the candidate or candidates in whose favor the vote shall be cast; shall be signed by the member or members from whom the powers are received, and the said signature or signatures shall be countersigned by a witness, which witness shall be a member of said Company.

Sec. 33. Powers to vote by proxy shall extend only to the election of Directors of said Company; in the decision of all other questions, only members present shall be entitled to vote.

Sec. 34. Each member of said Company shall, in the election of Directors and in the decision of all other questions, in the annual or any other meeting of the members of said Company, be entitled to one vote and no more.

Sec. 35. The President and Directors of said Company shall have power to approve, confirm or reject any assignment of any policy issued by said Company, and every such approval shall be in writing.

Sec. 36. The individuals named in the first section of this act shall be and they are hereby constituted a Board of Directors for said Company, to serve as such until the first annual election of Directors therein provided for. They shall have power, if they think fit, to make up their number to fifteen, as allowed in the third section of this act, from among the members of said Company; and all the vacancies which may occur in said Board by death, resignation, removal, or refusal to serve, may be filled by the remaining members of said Board; and a majority of their number, at any time, shall constitute a quorum for the transaction of business. They may call the first meeting of the members of said Company, at any suitable time and place in the city of St. Louis, as aforesaid, by advertising in at least two of the newspapers printed in said city, giving at least ten days' notice of the place, time and design of said meeting. They may make and establish by-laws for the government of said Company until the first annual meeting thereof, and may transact any business necessary and proper to carry into effect the provisions and intentions of this act: *Provided*, however, that no policy shall be issued by said Company until his Excellency the Governor of the State of Missouri shall have made proclamation that application has been made for insurance in said Company for forty thousand dollars at least, of which notice shall be given him by the Directors.

Sec. 37. Any future Legislature of this State shall have full power to repeal this charter whenever it shall be deemed expedient. This act to take effect from and after its passage.

Approved March 10, 1859.

I, B. F. Massey, Secretary of State, do hereby certify that the foregoing act, entitled "An Act to Incorporate the South St. Louis Mutual Fire and Marine Insurance Company," is a true copy of the original roll now on file in this office.

In testimony whereof, I have hereto set my hand and fixed the Seal of my office. Done at the City of Jefferson, this 12th day of March, A. D.1859.

[SEAL.]

B. F. MASSEY,
Secretary of State.

BY-LAWS

OF THE

SOUTH ST. LOUIS MUTUAL FIRE & MARINE INSURANCE CO.

ARTICLE I. *Of Meetings.*

Sec. 1. The annual meetings of the Company shall be held on the first Saturday in May in each year, (the first to be on the second Saturday in April, 1859,) at such place in the city of St. Louis as the Directors may order; and shall be notified by advertisement, signed by the Secretary, and published twice at least in two or more newspapers printed in St. Louis, the last publication of which shall not be less than three days before the time of holding said meeting.

Sec. 2. At every meeting of the Company the President shall preside, and in his absence the Secretary or any Director may call to order and preside until a Chairman be chosen. The election of Directors shall be by ballot, each member having one vote; and absent members voting by proxy must authorize such proxy or proxies in writing, signed by the person represented, a form for which is hereunto annexed, which shall be filed with the Secretary: *Provided*, that none of the Officers or Directors of this Company shall be allowed to vote by proxies at any election for Directors. All other questions may be determined by voting in such way as the majority of voters present may deem proper.

FORM FOR PROXIES.

"*To the South St. Louis Mutual Fire and Marine Insurance Company.*

"—— hereby authorize and empower ———— to vote ———— for Directors, at the annual meeting of the South St. Louis Mutual Fire and Marine Insurance Company, to be held in St. Louis, Saturday, May, ——. Given under —— hand, this —— day of ——, 18—.

"Witness: ————. ————."

ARTICLE II. *Of Officers and Committees.*

Sec. 1. The President shall attend, as often as it becomes necessary, at the office of the Company; he shall approve, by endorsement upon the back, all applications for insurance, after the same have been examined and reported upon by the Committee on Applications, and, jointly with a committee of two Directors, examine all losses sustained by the Company. The President shall sign all policies, checks, and orders, for the payment of money, and the same shall be countersigned by the Secretary. He shall have the general supervision of the affairs of the Company, and direct where the funds of the Company are to be deposited, and see that the same and other property belonging thereto be safely kept; and he shall exhibit to the Directors, at each monthly meeting, a statement of the affairs of the Company.

Sec. 2. The Secretary shall keep the books and accounts, fill up and record all policies of insurance, countersign policies and checks, and notify and attend all meetings of the Directors and Company, and perform all such other duties in the office as the President may require. He shall hold his office for one year, unless sooner discharged by the Board of Directors, and until his successor shall be duly appointed and qualified, and shall be sworn to the faithful discharge of his duties.

Sec. 3. The Treasurer has to give sufficient security to the Directors for the funds in his hands; it is his duty, immediately after any assessment is ordered, to instruct the Secretary to forward to each individual assessed a separate notice, stating the amount of his assessment, and the day on which it will become due. Notice of assessments shall also be given by the Treasurer, and published in one or more newspapers printed in St. Louis, ten days successively, the last publication of which shall not be less than two weeks prior to the time fixed for the payment, and in such other newspapers as the Directors may deem expedient.

Sec. 4. The Committee on Applications shall consist of three Directors, whose duty it shall be to examine all applications for insurance, and pass on the approval or rejection of same; shall fix the sum to be taken on each risk, and the rates of insurance, subject however to the approval of the President. The committee shall be appointed by the President, and serve for three months, or until their successors are appointed.

Sec. 5. The Committee on Fires shall consist of two Directors, to be appointed by the President, and shall serve for three months; it shall be their duty to inquire into the cause and origin of each fire, and ascertain and determine the loss sustained by the assured, and report the same to the Board of Directors at their next regular or stated meeting. The President shall be *ex officio* a member of this committee.

Sec. 6. The Secretary shall receive such compensation for his services as the Board of Directors may determine. The President, Treasurer, Directors and Standing Committees shall receive no compensation nor salary for their services.

ARTICLE III. *Of Hazards and Conditions of Insurance.*

Sec. 1. The company will make insurance for any term not less than one month and not more than six years; and the amount of the premium note, or sum to be deposited for the insurance of any building, shall be according to the hazard of such building, or the danger to which it may be exposed to loss or injury by fire, taking into consideration the materials of which it is composed, the manner of its construction, the purposes for which it is used, its situation as to other buildings, and all other circumstances affecting its risk.

Sec. 2. Buildings are divided into the following classes, and the amount of the premium notes required for their insurance will be the aggregate amount of the yearly premiums for the time insured, agreeably to the rates following, to wit: *First Class*—Houses or stores of stone or brick, with roofs of slate, metal or other fire-proof roofs, and iron shutters, unconnected with and not exposed by other buildings—from one to one and a fourth per cent. per annum. *Second Class*—Houses or stores of stone or brick, with roofs of wood, unconnected with and not exposed by other buildings; houses or stores, with brick or stone sides or ends, in which the fire-places are constructed standing alone, and not exposed by other buildings—from one to one and a half per cent. per annum. *Third Class*—Houses or stores connected with or exposed by other buildings, or like buildings built wholly of wood, standing alone and not exposed by other buildings—from one to two per cent. per annum. *Fourth Class*—Houses or stores built wholly of wood, connected with or exposed by other buildings—from one to three per cent. per annum. *Fifth Class*—Buildings, of any of the foregoing descriptions, when occupied as taverns—from one-sixth to one-third per cent. in addition to the foregoing rates. *Sixth Class*—Barns and stables—from one to three per cent. per annum. *Seventh Class*—Bakeries, breweries, blacksmiths, and tanneries—from one to three per cent. per annum. *Eighth Class*—Bookbinders, stationers, apothecaries, china, earthen and glass-ware, and confectionary—from one and a half to four per cent. per annum. *Ninth Class*—Woolen, cotton and grist mills, driven by steam; steam engine manufactories, furnaces, soap and candle factories, carriage makers and joiners' shops, and cabinet makers—from two to five per cent. per annum.

Sec. 3. Furniture and goods not deemed hazardous will be insured at the same rates with buildings in which they are contained.

Sec. 4. The following trades and merchandise are deemed hazardous and additional premiums will be charged upon their insurance, to wit: rope makers, tanneries with fire-leaching and bark mills, foundries, houses building or repairing, coopers, jewellers' stocks, painters' shops, tallow melters and chandlers, tobacco manufactories with kilns, turners, match factories, and such other trades and merchandise as the Directors may determine.

Sec. 5. In case of fire, or loss or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property, and it is mutually understood that there can be no abandonment to the Company of the subject insured.

Sec. 6. Policies of insurance shall take effect at twelve o'clock, noon, on the day of the approval of the application, at the office of the Company, and shall be binding thereafter.

Sec. 7. Ten per cent. of the premium note shall be paid in all cases, and endorsed thereon, at the time of receiving a policy by the assured.

Sec. 8. Insurance shall not be made to a greater amount than four thousand dollars on any one risk.

Sec. 9. Whenever required in writing, the assured, or person claiming, shall produce and exhibit his books of account and other vouchers to the Directors, or their duly appointed Agent, in support of his claim, and permit extracts and copies thereof to be made.

Sec. 10. In towns or settlements where there are no laws in existence regulating the keeping of gunpowder, members of this Company may keep for sale any quantity not exceeding twenty-five pounds,—provided it be kept in tin or copper canisters, and kept at all times standing in a conspicuous place, easily accessible to any one on entering the room.

Sec. 11. One dollar shall be paid for each policy, and fifty cents for every assignment and transfer.

ARTICLE IV.

Sec. 1. These By-Laws may be altered from time to time, at any subsequent meeting of the Board of Directors, by a two-thirds vote,—provided that notice thereof be given at a previous meeting in writing.

Neben-Gesetze.

Art. I.

Ueber Versammlungen.

§ 1. Die jährlichen Versammlungen dieser Gesellschaft sollen am ersten Samstag im Mai, (die erste am zweiten Samstag im April 1859) an solchem Orte in der Stadt St. Louis gehalten werden, als die Direktoren bestimmen, und soll durch eine vom Sekretär zu unterzeichnende Ankündigung bekannt gemacht werden, die in zwei oder mehr in besagtem St. Louis gedruckten Zeitungen zwei Mal veröffentlicht werden soll; die letzte Veröffentlichung soll nicht weniger als drei Tage vor dem Tage der Versammlung geschehen.

§ 2. In jeder Versammlung der Gesellschaft führt der Präsident, wenn er zugegen ist, den Vorsitz; in dessen Abwesenheit jedoch ruft der Sekretär oder der Schatzmeister die Versammlung zur Ordnung und soll so lange präsidiren, bis ein Vorsitzer erwählt ist. Die Direktoren-Wahl soll durch Stimmzettel geschehen, wobei jedes Mitglied eine Stimme hat. Abwesende Mitglieder, die durch Bevollmächtigte stimmen, haben solche Vollmacht schriftlich zu geben und zu unterzeichnen, und diese Vollmacht soll dann bei dem Sekretär deponirt werden. Ein Formular für derartige Vollmachten ist weiter unten beigefügt. Vorausgesetzt jedoch, daß weder der Präsident, Sekretär oder Schatzmeister, noch die Direktoren dieser Gesellschaft berechtigt sein sollen, Kraft solcher Vollmachten bei irgend einer Direktoren-Wahl zu stimmen. Bei Entscheidung aller andern Fragen mag so gestimmt werden, als die Mehrheit der anwesenden Mitglieder für zweckmäßig erachtet. —

An die "South St. Louis Mutual Fire and Marine Insurance Company".

——— beauftragen und ermächtigen hierdurch ——— für ——— und in ——— Namen für ——— für Direktoren in der jährlichen Versammlung der South St. Louis Mutual Fire and Marine Insurance Company, welche in St. Louis den ——— ten Mai 18—— abgehalten wird, zu stimmen.

Gegeben unter —— eigenhändigen Unterschrift, diesen —— ten —— 18——

Als Zeuge.

Art. II.

Beamte und Committeen.

§ 1. Der Präsident soll, so oft als nothwendig im Geschäftslokal der Gesellschaft gegenwärtig sein; er soll alle Versicherungs-Anfragen durch Indorsirung bestätigen, nachdem dieselben von dem Committee für Versicherungs-Anfragen untersucht und gutgeheißen wurden; und, gemeinschaftlich mit einem Committee von zwei Direktoren, alle Verluste untersuchen. Der Präsident soll alle Policen und Anweisungen für Auszahlungen unterzeichnen, und dieselben sollen vom Sekretär mitunterzeichnet sein. Der Präsident führt die allgemeine Aufsicht über alle Geschäfte der Compagnie und hat zu bestimmen, wo die Gelder der Gesellschaft deponirt werden sollen, und die sichere Aufbewahrung derselben, sowie anderen Eigenthums der Gesellschaft zu überwachen; er soll in jeder monatlichen Versammlung dem Direktorium einen allgemeinen Ueberblick über den Stand der Gesellschaft vorlegen.

§ 2. Der Sekretär soll die Bücher und Rechnungen der Gesellschaft führen, alle Policen ausfüllen und eintragen; alle Policen und Geldanweisungen mit-

unterzeichnen; alle Versammlungen des Direktoriums und der Gesellschaft bekannt machen und denselben beiwohnen, sowie alle anderen vom Präsidenten vorgeschriebenen Amtspflichten erfüllen. Er soll sein Amt für ein Jahr bekleiden, wenn nicht früher von dem Direktorium entlassen, und bis sein Nachfolger in gehöriger Form angestellt und qualifizirt ist, und soll für die getreue Erfüllung seiner Amtspflichten beeidigt werden.

§ 3. Der Schatzmeister hat dem Direktorium hinreichende Sicherheit für die in seinen Händen befindlichen Gelder zu geben; es ist seine Pflicht, nach jeder gemachten Schatzung den Sekretär zu instruiren, alle zahlungspflichtigen Mitglieder von ihren respektiven Quotas und dem Zahlungstermin zu benachrichtigen. Er soll die Notiz einer Schatzung in einer oder mehreren Zeitungen in St. Louis publiziren, während zehn auf einander folgenden Tagen, und die letzte Anzeige soll nicht weniger als zwei Wochen vor dem Zahlungstermin gemacht werden; auch kann in anderen dem Direktorium beliebigen Zeitungen gleichfalls publizirt werden.

§ 4. Das Committee für Versicherungs-Anfragen soll aus drei Direktoren bestehen, dessen Pflicht es sein soll, alle Anfragen für Versicherung zu untersuchen und dieselben genehmigen oder zurückweisen; es soll die Summe bestimmen, wie hoch die Versicherung anzunehmen ist, und die darauf zu zahlenden Prozente bestimmen, jedoch soll die Zustimmung des Präsidenten erforderlich sein. Das Committee soll vom Präsidenten ernannt werden und für drei Monate dienen, oder bis die Nachfolger ernannt sind.

§ 5. Das Committee für Feuer-Verluste soll aus zwei Direktoren bestehen, welche durch den Präsidenten ernannt werden und für drei Monate dienen. Es soll deren Pflicht sein, alle Ursachen der Entstehung eines jeden Feuers zu untersuchen und den Verlust des Versicherten ermitteln und bestimmen, und dasselbe an das Direktorium in der nächsten monatlichen oder angesagten Versammlung zu berichten. Der Präsident soll *ex officio* ein Mitglied dieses Committees sein.

§ 6. Der Sekretär soll solchen Gehalt bekommen, als das Direktorium bestimmt. Der Präsident, Schatzmeister, Direktoren und Committee-Mitglieder sollen keinen Gehalt oder sonstige Bezahlung für ihre Dienstleistungen erhalten.

Art. III.

Von Feuers-Gefahren und Versicherungs-Bedingungen.

§ 1. Die Gesellschaft nimmt Versicherung für jeden Zeitraum von nicht weniger als 1 Monat und nicht mehr als 6 Jahre an; und der Betrag der Prämien-Note oder der Summe, welche zur Versicherung deponirt werden muß, soll stets im Verhältniß zum Risiko und der Feuersgefahr eines solchergestalt zur Versicherung angebotenen Gebäudes sein, und soll hierbei auf die Materialien, aus welchen das Haus gebaut ist, die Bauart desselben, die Zwecke für welche es benützt wird, auf dessen Lage in Bezug auf andere Gebäude und auf alle anderen Umstände, welche das Risiko eines solchen Gebäudes erhöhen können, besondere Aufmerksamkeit verwendet werden.

§ 2. Gebäulichkeiten sind in die unten angegebenen Klassen eingetheilt. Der Betrag der für einzelne Versicherungen einzulegenden Prämien-Note soll die Total-Summe der jährlichen Prozente für die Dauer der Versicherung sein, im Einklang mit den folgenden Klassen.

Erste Klasse. Häuser und Waarenhäuser von Stein oder Ziegel mit Schiefer-, Metall- oder sonstigen feuerfesten Dächern, eisernen Läden, und abgesondert und keiner Gefahr durch andere Gebäude ausgesetzt, von 1 bis 1¼ Procent per Jahr.

Zweite Klasse. Häuser und Geschäftslokale von Stein oder Ziegel mit hölzernen Dächern, welche nicht mit anderen Gebäuden verbunden oder durch dieselben größerer Gefahr ausgesetzt sind; ferner ähnliche Gebäude wenn sie mit andern verbunden sind oder größerer Gefahr unterliegen; Häuser und Geschäftslokale mit Seitenmauern von Stein oder Ziegel in welchen die Feuerplätze gebaut sind, wenn dieselben allein stehen und nicht durch andere Gebäude bedroht sind, zu 1 bis 1½ Procent jährlich.

Dritte Klasse. Häuser oder Geschäftslokale, welche mit andern Häusern verbunden oder durch dieselben der Feuers-Gefahr mehr ausgesetzt sind, oder Gebäude ganz aus Holz erbaut, alleinstehend und der Gefahr durch andere Gebäude nicht ausgesetzt, zu 1 bis 2 Procent per Jahr.

Vierte Klasse. Ganz aus Holz gebaute Häuser oder Geschäftslokale, wenn dieselben mit andern Gebäuden verbunden oder durch dieselben feuergefährlich sind zu 1 bis 3 Prozent per Jahr.

Fünfte Klasse. Wenn irgend Gebäude der vorstehenden Klassen als Gasthäuser benutzt werden, so soll 1-6 bis 1-3 Prozent per Jahr als Zusatz zu den vorher bestimmten Prozenten bezahlt werden.

Sechste Klasse. Scheuern und Ställe zu 1 bis 3 Prozent per Jahr.

Siebente Klasse. Bäckereien, Brauereien, Schmiedewerkstätten und Gerbereien zu 1 bis 3 Procent per Jahr.

Achte Klasse. Buchbindereien, Schreibmaterialien, Apotheken, Porzellan-, Thon- und Glaswaaren und Conditoreien zu 1½ bis 4 Prozent per Jahr.

Neunte Klasse. Woll- und Baumwollspinereien, Mahlmühlen, wenn dieselben mit Dampf getrieben werden, Dampfmaschine-Fabriken, Schmelzöfen, Seife- und Lichterfabriken, Wagenmacher-, Schreiner-, und Möbelwerkstätten zu 2 bis 5 Procent per Jahr.

§ 3. Möbel und Waaren, wenn sie nicht gefährlich erscheinen, werden zu denselben Procenten versichert, wie die Gebäude, in welchen sie sich befinden.

§ 4. Folgende Geschäfte werden als gefährlich betrachtet und sind höhere Procente für deren Versicherung zu erheben, nämlich: Seilerwerkstätten, Gießereien, Gerbereien, Lohmühlen (die Feuer anwenden), Gebäude im Bauen oder Verbessern begriffen, Küferwerkstätten, Juwelierwaaren, Malerwerkstätten, Fettschmelzer, Lichtzieher, Tabackfabriken mit Trockenöfen, Drehereien, Zündhölzchenfabriken und solche andere Geschäfte und Waaren, als die Direktoren bestimmen mögen.

§ 5. Bei Verlust oder Schaden durch Feuer oder Feuergefahr soll es die Pflicht des Versicherten sein, nach seinen besten Kräften zur Rettung und Erhaltung seines Eigenthums beizutragen, und es ist gegenseitig einverstanden, daß das versicherte Eigenthum nie an die Gesellschaft abgegeben werden kann.

§ 6. Versicherungs-Policen sollen von 12 Uhr Mittags desjenigen Tages in Kraft treten, an welchem das Gesuch zur Versicherung angenommen wurde, und soll nach dieser Zeit für bindend erachtet werden.

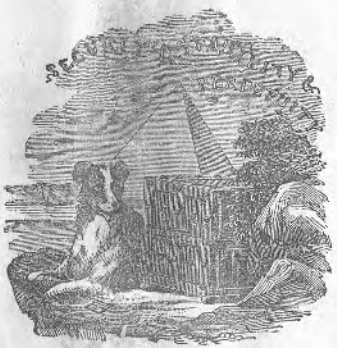
§ 7. In allen Fällen sollen 10 Procent der Prämien-Note beim Empfang der Police bezahlt und auf der Rückseite derselben indorsirt werden.

§ 8. Es sollen nie mehr als Viertausend Dollars in irgend einem Risiko versichert werden.

§ 9. Der Versicherte oder der die Entschädigung Beanspruchende soll, wenn schriftlich dazu aufgefordert, seine Rechnungsbücher und andere Papiere zur Bekräftigung seines Anspruchs den Direktoren oder deren Agenten einhändigen und zugeben, daß Auszüge und Abschriften davon gemacht werden.

§ 10. In Städten und Ansiedlungen, in welchen keine Gesetze in Bezug auf das Aufbewahren von Schießpulver in Kraft sind, sollen die Mitglieder dieser Gesellschaft berechtigt sein, irgend eine Quantität, jedoch 25 Pfund nicht übersteigend, zum Verkauf zu halten; vorausgesetzt, daß dasselbe in Blech- oder Kupferflaschen gehalten werde, und auf einem bemerkbaren Platz, der beim Eintritt in die Stube leicht zu erreichen ist, aufgestellt sei.

§ 11. Für jede Police soll ein Dollar und für jede Uebertragung 50 Cents bezahlt werden.

Art. IV.

§ 1. Diese Nebengesetze können von Zeit zu Zeit, in irgend einer spätern Versammlung, durch eine Zwei-Drittels-Mehrheit des Direktoriums abgeändert werden; vorausgesetzt, daß schriftliche Notiz davon in einer vorhergehenden Versammlung gemacht wird.