The words italicized are part of the printed form of the policy. The remainder of the clause quoted is type-written on a sheet of paper attached to the face of the policy, immediately following the former words, signed by the chief agents of the company, and otherwise authenticated as part of the policy.

The defendants covenant with insured (printed form) "that if the property hereinbefore mentioned is destroyed or damaged at any time between the hour of 12 o'clock noon of the 11th day of May, 1903, and the hour of 12 o'clock noon of the 11th day of May, 1906, they will make good unto the assured all such loss or damage by fire not exceeding in respect of each of the several subject matters above specified the sum set opposite thereto or the interest of the assured therein, and not exceeding in the whole the sum of $75,000, the said loss or damage to be estimated according to the actual cash value of said property at the time the fire shall happen."

A previous policy, No. 29,412, for $75,000, substantially in the same terms, dated 9th May, 1901, had been granted by defendants to plaintiffs, which was afterwards renewed for a year from 11th May, 1902. The premium paid on the grant and the renewal was the sum of $5,000 on each occasion. On this no claim for loss had ever arisen.

Plaintiffs' claim is in the alternative; either the first policy is valid and covers the risks alleged to be insured against, and they are entitled to recover the losses paid by them; or both policies are in toto invalid and ultra vires of defendants, as being a kind of policy, sc., a guarantee policy, which under the Act they had no power to grant, and are not fire insurance policies, in which case they never attached, and plaintiffs are entitled to recover back the premiums paid by them as upon an entire failure of consideration.

Defendants deny that the policy is a guarantee policy, but say that the only property the loss of which is in question in the action and for the destruction of which plaintiffs had paid, was standing timber, to the insurance of which their statutory powers do not extend. Plaintiffs contend that if that be so (which they deny), the parties to the contract never were ad idem, as plaintiffs intended to obtain insurance against the destruction by fire from their locomotives of standing timber along their line of railway, and, if they