Notice and oath, by the policy, in the case referred to, were to be given within three days. The insured resided in St. Louis; the agent obtained the policy, signed the application, executed the premium, and the company refused to pay before the suit on other grounds.[1]

The American clause is more rigorous. "All persons assured by this Company, and sustaining loss or damage by fire, are to give *immediate notice thereof, within fourteen days*, to the secretary or manager of the company, or to the agent of the company, should there be one acting for it in the neighborhood of the place when such fire took place, and as soon after as possible, to deliver in a particular account of such loss or damage, signed with their own hands, and verified by their oath or affirmation.

"They shall also declare on oath or affirmation, whether any and what other assurance has been made on the same property; what was the whole value of the subject assured, and what their interests therein; in what general manner (as to trade, manufactory, merchandise or otherwise), the building assured or containing the subject assured and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe. They shall also produce a certificate, under the hand *and seal* of a magistrate or notary public, most contiguous to the place of the fire, *and not concerned in the loss*, stating that he has examined the circumstances attending the fire, loss or damage alleged, and that he is acquainted with *the character* and circumstances of the claimant, and verily believes that he, she or they, have, by misfortune, and without fraud or evil practice, sustained loss and damage on the subject assured, to *the amount which the magistrate shall certify;* and until such proofs, declarations and certificates are produced, *the loss shall not be payable.* Also, if there appear any fraud or false swearing, the assured shall forfeit all claims under this policy."

"When merchandise or other personal property is partially damaged, the assured shall forthwith cause it to be put in as good order as the nature of the case will admit of, aided by a surveyor of the company, should the Board of Directors deem it so necessary; and shall procure a list or inventory of the whole to be made naming the quantity and cost of each article. The damage shall then be ascertained by the examination and appraisal of each article, by disinterested appraisers mutually agreed upon; one half the expenses to be paid by the assurers."

Condition requiring certificate of magistrate or notary most contiguous,etc.; in *Lampkin* v. *W. Ins. Co.*, 13 U. Ca., the Queen's Bench held it to work.

In *Shannon* v. *Hastings M. F. In. Co.*, it was held unreasonable under 36 Vic., c. 44, sec. 33 (O.) The Supreme Court of Canada held so in 1878 in *Shannon's* case on the appeal of *Hastings M. F. In. Co.*, which appeal was dismissed.

Semble, in Quebec such condition is not unreasonable, but insurance companies are omitting that condition.

§ 238. *Delivery of particular account a condition precedent.*

The delivery of the particular accounts is a condition precedent to be performed by the insured, and to be averred in the declaration to show title to recover.

Under the American clause the insured may lose his claim through the refusal, even wilful or groundless, of the nearest notary or magistrate to certify. This is similar to the old condition in England, requiring the certificate of the minister and churchwardens of the parish, which condition is rarely, if ever, seen now. The working of it may be observed by reference to the backneyed cases of *Wood* v. *Worsely*, 2 H. Bl.; *Routledge* v. *Burrell*, 1 H. Bl.; *Worsely* v. *Wood*, 6 D. & E.; *Oldman et al.* v. *Bewicke*, 2 H. Bl.[1]

§ 239. *Slight informality does not invalidate notice.*

In *Wiggins* v. *The Queen Insurance Co.*,[2] the jury found that the plaintiff made his claim with particulars, "but not in due form." The Superior Court thereon dismissed the action, but the judgment was reversed in appeal, and the plaintiff was allowed to recover.

[1] The Court held that if it had doubt, it would hold the objection waived, not being made till after suit.

[1] As to *Wood* v. *Worsely*, three of the judges were against the ruling of the Court, and Bell seems inclined the same way.

[2] In the Queen's Bench, Montreal, A.D. 1868.