of other steamboats similar or nearly so to the Malakoff, and at or about the time of the accident, as the policy criterion of the value of the Malakoff was rejected by the Judge, who said that he could not accept the Defendants' view of the law, who wished to estimate the value by bringing a steamboat into the market and selling her suddenly for cash. These rulings are not in conformity with the contract or with law. The stipulation in the policy, the binding contract between the parties, is, *that the loss or damage shall be estimated according to the true and actual cash value of the property at the time the loss shall happen.* What, then, is that cash value, and by what other fair mode of ascertainment can it be found than by its cash price in the market? Old Hudibras expounds the rule perfectly, "The value of a thing is what it will bring." It cannot be by taking the intrinsic cost of the subject, there can be no intrinsic value of such a thing, nor by separating the subject from the circumstances of time and place, which alone can give it a current value. If the destruction of the subject render it not available for appreciation by actual sale, its cash value may be found by ascertaining the price obtained in cash for like or nearly like subjects at the time. The abstraction of time and place from the estimation would make it impossible to know the cash or even the fair value of any thing, and specially of the subjects in this case at the given time of the contract, as ruled in this case. The money value in the existing market is the only rule and guide to carry out the stipulation of the contract, and this rule is moreover supported by authority. 2 Phillips, No. 1176, says—Insurance being a contract of indemnity, the underwriters are not liable to pay any loss except such as the assured has actually sustained; whether the loss be total or partial, its amount cannot be ascertained without determining the value of the subject. In No. 1245 the author says—The value of a building or of any article in a fire policy is what it could be sold for, since its value must be proved; and it does not appear what other value than this could be satisfactorily shewn. He remarks that the obvious presumption is that the rule is the same in a fire policy as in a marine insurance, namely, that the value of the subject at the beginning of the risk is referred to *where the policy by its provisions* or the description of the subject does not require a different construction. The authorities from Hammond and Ellis, cited to the jury, rest upon the general rule of the value at the beginning of the risk, but do not apply to this and similar cases in which the policy contracts expressly for an exception; the effect of the ruling would absolutely set aside the policy stipulation of the true and actual cash value at the time of the loss, and substitute for it, either that of intrinsic value or the mere fair value at the time of the loss, independent of all circumstances regulating or applying to it. Angell, on Fire insurance, §264, 5, says, "that loss or damage to goods is to be estimated according to the true and actual value of the property at the time the loss happens," and cites a judgment in Louisiana, by which a fair sale at auction, after notice to the insurers, may be considered by the jury in estimating the damage and ascertaining the indemnity. 1. Bell's Com. on Law of Scotland p. 643, says the loss is estimated on the destructible parts on the whole value of the house as it would have sold in the market, &c., and so, also, the French authorities are equally precise. See Boudousquié, p. 164—"Mais quoi doit-on entendre par la juste valeur des choses? Ce n'est ni la valeur de convenance, ni celle d'affection, ni même le prix d'achat, c'est la valeur vénale, c'est-à-dire le prix qu'on en pourrait retirer si on les mettait en vente. *Valere res dicitur quantum vendi potest.*' Dans la règle le juste prix est celui auquel les choses de pareilles nature et qualité sont vendues dans les mêmes lieux, dans le même tems, dans les mêmes circonstances et à toutes sortes de personnes sans avoir égard à la valeur extraordinaire, c'est-à-dire au prix qu'on peut obtenir en certain cas, et sous certains rapports. Le contrat d'assurance n'étant pas une mesure conservatoire des objets assurés mais seulement un contrat d'indemnité, &c. En un mot l'assureur garantit l'assuré contre la perte réelle qui résulte de l'incendie mais cette perte payée son obligation est éteinte. See, also, Grun and Joliat, p. 25; Persil, p. 90, Nos. 71, 72. Emerigon Meredith's Translation, cap. 9, §1; and Gouget and Merger vo. *Assurance Maritime*, p. 364, who hold that the contract would be one against public policy and morality if the contrary doctrine were maintained. This policy, then, having expressly stipulated for the kind and time of valuation; any other judicial instruction to the jury upon the matter is not warranted, and hence the ruling and instruction as above are illegal. There only remain the questions of representation and warranty. The written words of the policy in connection with these points are as follows: after stating the particular amounts upon particular parts "*of the steamer Malakoff now lying in Tate's Dock, Montreal, and intended to navigate the St. Lawrence and Lakes from Hamilton to Quebec, principally as a freight boat, and to be laid up for the winter in a place approved of by this Company, who will not be liable for explosions, either by steam or gunpowder.*" This statement must necessarily be subjected to legal construction to determine its nature, whether of representation or warranty. Then, as to its being a representation, the language is plain, simple, and explicit, adverting to navigation during the season, the course of that navigation, the principal manner of conducting it, and because of the date of the policy providing for laying up the steamer during the intermediate winter period between the open summer periods containing the winter. It is impossible for such language to require constructive explanation. But if it be a Representation, testimony is admissible with reference to it, but to what purpose here, where it is in writing and in plain and clear phraseology? Angell, p. 194, condensing other authorities, remarks, "A representation in the technical sense in which that term bears to the law of insurance, and, as distinguished from warranty has been well defined, a verbal or written statement made by the assured