

withdrawing the case from the jury.¹ The ultimate test of materiality is "whether the risk be increased so as to increase the premium." *Per* Story J., in 1 Peters p. 188. *Ib.* [Seemingly, if the judge charge that a material concealment was to be held, and found, a new trial will be granted.] But see 1 Peters, Rep.

Where a policy is altered and the risk enlarged, the obligation of disclosing all material facts undoubtedly exists, and the effect of a concealment will render void the altered contract, and yet not restore the original contract, but will annul the whole policy. 2 Duer, Lec. 13, p. 429.

§ 169. *Alterations, and change of use of buildings insured.*

Increased hazard by mere temporary change in the occupation of a building, or by the occasional use of fire, or occasional deposit of hazardous goods after a policy has been effected, will not always avoid or vitiate a policy; unless a condition order that it shall.

A change to a hazardous trade from a non-hazardous, even without condition, will avoid the policy. The nature of the contract is such that if the risk be increased, the insurer (surety) is discharged, according to the principle stated in *Rees v. Berrington*. As in cases of deviation, however slight, the insurer is discharged; and as the Lord Chancellor in *Rees v. Berrington* said, the judge cannot try what mischief it may have done. It is sufficient that if the surety had been informed he might have declared unwillingness to continue bound.

Pim v. Reid,² was a case in which there was increased hazard after the policy had been effected, yet it was held not to vitiate the insurance. But the decision in this case, or in *Shaw v. Robberds*, must not be taken as deciding generally that a more dangerous trade can be carried on than is mentioned in a policy without vitiating the policy. The decision in *Pim v. Reid* was founded in part on the fact that the pleas did not state or show that a reasonable time had elapsed for giving notice. In *Sillem v. Thornton*,³ the

judgments in *Pim v. Reid* and *Shaw v. Robberds* are explained.

In *Shaw v. Robberds*,¹ the premises insured were described in part as a kiln for drying corn, and a condition stated, that unless the trade carried on in the insured premises be accurately described, or if a kiln or any process of fire heat be used and not noticed in the policy, the policy should be void; the sixth condition stated, that if the risk to which the insured premises were exposed should be by any means increased, notice should be given at the office and allowed by endorsement on the policy, otherwise the insurance should be void; it appeared that a cargo of bark had sunk near the premises of the insured, and he allowed the bark to be dried at his kiln grates, and in consequence of the fire during this process the premises were burnt down; it was found, as a fact, that drying bark was a more dangerous trade than drying corn; it was held that the use of the corn kiln for a different purpose from that intended at the time of making the policy was not a misdescription within the meaning of the third condition; secondly, that the said use of the kiln was not such an alteration or increase of risk as required notice to the office; thirdly, that no clause in the policy amounted to express warranty that nothing but corn should ever be dried, and that a warranty to that effect was not to be implied.

In *Sillem v. Thornton*,² the house insured was described as two stories, roof of zinc, with further particular description, and the description was part of the policy. It was held a warranty that the building should not be altered so as to increase the risk; and a third story having been added to it, and a new roof not covered with zinc having been put upon it, the house having been burned in a large fire, the insurer was held free. [In this case the question of increased risk was left to the Judges by consent.]

It is important in conditions like this to have the wording "so long as the same shall be so used" etc, else the insurance may

¹ *Ib.* p. 190.

² 6 Scott's N.R., 6 M. & G.

³ 26 E. L. & Eq. R.

¹ 6 Ad. & E.

² 18 Jurist 748; 26 E. L. & E. R.