Appellants claim that the Respondents insured against the risks involved in the known and necessary processes of ship building. Were not the Insurers bound, more especially in a place like Quebec, the seat of this species of commerce and manufacture, to know that such an employment of the premises was intended and necessary, and did they not assume that risk, when insuring a complete establishment of which this building, to accomodate minor works of ship carpentery, such as the trimming of masts and yards, formed a necessary part? Is it not a legitimate conclusion to draw, from the terms of the policy that this risk was contemplated? The Jury have found that there was no concealment of this circumstance, and indeed the very terms of the policy would indicate that the insurers were made formally aware of it when undertaking the risk. It is well known that insurance policies are drawn with special care to protect the insurers, that the insured have but a limited control over the terms of the instruments, and that they require to be construed liberally in favor of the assured. For the Insurers in this case, who have insured these premises for a succession of years as a Ship Manufactory, to urge such a plea as that put forward in this case, is calculated to shake all confidence in them, and it would really be for their advantage that the Court should refuse to countenance such attempts to escape from responsibility. On the second point,—the use of fire, the Court will perceive that the Jury have limited their finding to an *occasional* use of fire, and this occasional use will be found by the Court to have amounted to one or two occasions, not for the purpose of heating, but for the purpose of facilitating some operation of the workmen, and made by them. This the Appellants contend does not come within the contemplated prohibition, which applies only to a permanent and habitual use of fire so as to create a different risk, and the jury have accordingly expressed their opinion in this matter by the limitation of their finding. Had the insurers traced the fire to have originated from this cause, the case would have assumed another complexion, but this is neither alleged nor proved, it being on the contrary established, that there was no fire in the building for hours before, and the origin of the fire so far as traced, is supposed to have been external, from the wharf, outside the building, and caused by some incendiary.

On the subject of the separate insurances on the wharf and on the building as already adverted to, the causes which might defeat the recovery of the insurance on the building have no application whatever to the wharf, and the verdict establishes merely this—that the wharf was insured—was damaged—and that the damage amounts to £100. No connection is established between the two insurances or risks, and if the evidence be consulted, it will be seen that the fire was communicated from the wharf to the building, and not from the building to the wharf.

With reference to the motion for a new trial, the Appellants do not ask it, as repudiating the verdict of the jury, but being limited to making that motion within a certain delay, thought it prudent to place it within the power of the Court to order a new trial in the event of the answers of the jury not being considered conclusivly satisfactory on the issue.

This Court will also perceive from the judgment itself of the Court below, that that Court has committed error, in assuming facts from the evidence to base the judgment, and that, in opposition to the finding of the jury, whose answers must be accepted as conclusive as to fact.

The Appellants conceiving that the terms of the policy covered all the risk as proved, that the jury have negatived all the important allegations of the Respondents tending to defeat the Appellants' claims, and have so qualified the other allegations of the defense as to legally negative those also, look for the reversal of the judgment appealed from, and for a judgment awarding to them the full amount of their insurance.

ANDERSON & PARKIN.

Attorney for Appellants.

Quebec, February, 1860.