" sumption that the subsequent underwriters subscribe the policy from the confidence reposed by " them in the skill and judgment of him whose name they see stand first in the policy and from " their belief that he had duly ascertained and weighed all the circumstances material to the risk."—1 Arnould, p. 531; 10 Pick, 402; 1 Peters, S. C., 186. It is true there are limitations to the rule, as " that it is strictly confined to those matters of intelligence relating to the subject insured, with " regard to which it is reasonable to suppose that the first underwriter would require information and " without which it may be presumed he would not have subscribed to the policy." The rule is also confined to the first underwriter, and to underwriters on the same policy. It has not been extended, nor is the presumption on which it rests made applicable, to underwriters on a second policy on the same interests and risks, *unless*—says Arnould, p. 537—perhaps, it could be clearly shown that the second policy was fraudulently obtained by the exhibiting of the first. Duer, 68-9; Tibbald *vs.* Hall, 2 Dow, p. c. 262. This latter remark shows that the rule is not altogether absolute against the admission of evidence to sustain fair dealing between the parties and resting authoritively upon the broad legal principle that fraud annuls contracts. 2 Duer, p. 673. The rule, with its restrictions and limitations of English decisions, is adopted as unquestionable, and Mr. Duer, with his usual perspicacity and learning observes:—" In the United States, although from the disuse, almost total, " of private underwriters, the application of the rule is now of rare occurrence, its validity has been " often recognised; and, however strongly we may be disposed to question the sufficiency of the " reasons on which it was introduced, it stands on too firm a basis of precedent and authority to be " now shaken. I confess my own adherence to the rule, on the *ground of reason as well as of* " *authority*. I regard the presumption on which it is founded as reasonable, sound and practical. " It springs from acute knowledge of men. and of the usual mode in which business is conducted, " and, as will appear hereafter, it is the very presumptions on which other decisions, of which the " propriety and wisdom have never been doubted, are solely placed and can *alone* be vindicated." Now, this is made to rest upon presumptions only: how can such presumptions be reasonably refused their operations in this case, under our legal system? The aggregate insurance, whereof that of the Defendants was a part, was in effect one insurance, as originally contemplated and designed by the Plaintiff; the influence of the insurance effected with the Equitable Company, as the first insurer, must have been felt by the Defendants, and the benefit of the Plaintiff's false and fraudulent misrepresentations to that first insurer, may not in reason be refused to the Defendants under the circumstances of the case. It may be that the first policy may have been exhibited to the Defendants, or other facts adduced, showing that or other implications against the Plaintiff; at all events false representation and fraud have been pleaded to this action, and the preventing of the introduction, *in limine*, of testimony tending to support these allegations and the rejection of the questions proposed to the witnesses Tate and Lunn, appear to have been at least premature and not consonant with law, the more so as our legal system is more enlarged than that from which we derive our commercial law of evidence, because it partakes more of the Equity than the common law principles in practice in England. A casual remark upon the 9th objection, that all material representations had been made by the Plaintiff to the insurer will suffice. It is quite true that all such matters are within the sole province of the Jury and not for the Judge to express his Judicial opinions upon them, and thereby in effect to substitute his opinion for their findings. It is undeniable that the Judge cannot pass either upon the existence or extent of misrepresentations put in issue as matters of fact. The same observations apply to the 11th objection as to fact of Plaintiff's concealment in relation to the hull of the Malakoff. It is not, however, meant to be asserted that Judges are precluded from the expression of their own opinions to Juries upon facts submitted; but even then the latter are independent of such opinions, and themselves weigh the effect and importance of the evidence adduced. In a recent case in England in 40 Eng. Rep. p. 358, it was held that strong comments by the Judge to the Jury on facts of the case was no ground for a new trial; and Pollock, C. B., said—" I know of no rule of " morality which tells a Judge that he is not to make observations on the evidence in a cause. He " may tell the Jury it is strong or weak, if really it is so. I can go farther and say it is a dereliction " of duty if he does not."—2 Duer, 396.—As to concealment and its legal bearing upon the insurance, it may be observed that where there is entire good faith, non-disclosures are not to be deemed material simply that their communication might have excited suspicion in the insurer. Where there was no intention to deceive, but the non-disclosure was witheld solely from the conviction of its unimportance, it should appear clearly, in order to avoid the policy, that the facts would have been deemed material by every prudent underwriter as really embracing the risk and justifying an increase of premium. The insured should not be required at the peril of his contract to anticipate all the suspicions that might arise in the mind of the insurer, by disclosing facts which he reasonably believes could have no effect in varying the risks he desired to cover. It is true that an erroneous belief will not protect him; but the error, wholly unmixed with fraud, that is to deprive him of an indemnity, ought to be conclusively established. The 13th and 14th objections refer to the ruling in the first instance, by which the decision of the Jury upon the value of the subjects was to be based on; " *their intrinsic value to* " *be made out from the evidence of Merritt and the Engineers; and, in the second instance, that* " *their value was to be the fair value at the time of the loss, unaffected by local circumstances or by* " *other accidental causes of depreciation.*" The Defendants' evidence of the market price and sale