

Chalmers
vs.
Insurance Com-
pany.

that the value of the goods so destroyed by fire exceeded the amount stipulated in his favor as well by the Policy of Insurance, signed by the Respondents as by the Policy, signed by the Aetna Insurance Company; and that in consequence in the judgment pronounced by the Court below, on the 27th day of March, 1858, dismissing the action of the said Appellant with costs, there is error:—It is considered and adjudged by the Court here, that the said judgment of the Court below be, and the same is hereby reversed, annulled and made void; and the Court here, proceeding to render the judgment which the Court below ought to have rendered, doth condemn the said Respondents to pay and satisfy to the said Appellant the said sum of £375 currency, for the causes in the said Appellant's declaration mentioned, with interest thereon from this day, and costs incurred by the said Appellant as well in the Court below as in this Court here in this behalf. The Honorable Mr. Justice Aylwin dissenting."

The Judgment of the Court was delivered by DUVAL, J., who cited the following authorities:—

Dunlop's Paley on Agency, p. 161, s. 2. 1 Bell's Com. p. 607 (1) and 478. Pothier Mandat No. 29, also p. 888, observation générale. Ellis on Insurance p. 229, No. v and No. vii.

AYLWIN, J., *dissentiens*.—

The Statute, under which this Insurance Company has its being, has provided, "that if any Insurance on any house or building shall be made with the Company, and with any other Insurance Company, or office, or person at the same time, the policy issued by the Company shall be void, unless such double Insurance shall have been agreed to by the directors, and their consent to the same signified by an endorsement on the policy, signed by the President and Secretary." This enactment is a condition implied in every risk taken by the Company and forms part of the contract with the assured. Supposing this condition to have been expressed in so many words, on the back of the policy, would it not be very like a quibble to argue, that because, in terms "house or building" was only mentioned, that the contents of a house or building did not fall within these words. The risk as to Insurance on goods and chattels, is much greater than on "house or building," the number, quantity and value, being so variable and uncertain, and so difficult to be ascertained, of which this very case presents a forcible example. Is it consistent with reason then, that the Insurance on a chattel interest should be exempt from the obligations of an Insurance, on a house or building? The term "house or building" is a larger expression, comprehending within it the goods and chattels contained in it, and is not in my opinion exclusive of them. The rule *qui dicit de uno, negat de altero*; does not apply here, but the other and more certain rule *ubi eadem est ratio, ibi est idem jus*, is to receive its due application. The Legislature by the Act of the 10 Victoria, ch. 58, has placed this construction upon "house or building," as a generic term, comprehending different species, and not as distinct species, by declaring "that the provisions and sentiments contained in the 23d Section of the above cited Act, (the Section above cited) shall be held to include and have reference to all property as well personal as real." This Legislative construc-