tomary in like establishments, evidence of usage must be admitted."

In the *Glendale* case, the question was put: "*During the night*, is there a watchman?" *A.*—There is a watchman nights. This was held to mean during night—always. That involved more obligation than *Crocker's* case (so the two decisions may stand).

§ 142, Angell says the application with questions and answers forms part of the policy. Is there a watchman in the mill during the night? Answer—"There is a watchman nights." The mill was burnt at night while no watchman was there. Held, a warranty broken, very properly. *Glendale Manufacturing Co.* v. *Prot. Ins. Co.*[1]

This is better law than that in 22 Conn. R. *Shelden* v. *Hartf. F. I. Co.*, or than the case in which the policy, stipulating "Watchman kept on the premises," did not require the constant keeping of a watchman; but only at times as men ordinarily careful kept, &c.; *Crocker* v. *Peoples M. F. I. Co.*, 8 Cushing, R. (in which *usage* of similar establishments was, improperly, allowed to be proved).

In the questions and answers before policy, "watchman to be kept at all times," &c., was promised. The sheriff seized the mill and locked it up, and the day after, it was burned. So the warranty about the watchman was not kept. The Court held the sheriff's seizure to be no excuse.[2]

The Court of Appeal of Ontario seem to hold that this is not a warranty for a continuance of employment of a watchman. *Worswick* v. *Canada Fire and Mar. Ins. Co.*, 3 Ontario App. Rep. of 1879.

A continuous practice to keep is not warranted here; it is a mere statement of a fact then existing. *Grant* v. *The Ætna*, so held in P. C. Many American cases hold it constructive warranty. *Ripley* v. *Ætna Ins. Co.*, 30 N.Y. See what is said in *Kentucky and Louisville Mutual Ins. Co.* v. *Southard*, cited in *May*, sec. 163. But if that description be given, and a condition prohibiting any change material to the risk, the withdrawal of the watchman would avoid the policy, *per* Moss, Ch.J., in *Worswick's* case; and this condition may be with a qualification, by addition of words such as "within the control or knowledge of the 'insured.'"—*Ib.*

[1] 21 Conn. R.

[2] *First National Bank of Ballston Spa* v. *Ins. Co. of N.A.*, 7 Albany Law J., p. 187.

Is there a watchman at night? Is the mill ever left alone? *Ans.*—No regular watchman, but one or two hands sleep in the mill. Held, a continuing warranty, under a warranty policy. *Blumer*, appellant v. *Phœnix Ins. Co.*, respondent (Wisconsin), 33 Am. R., A.D. 1879. The insurance company gained.

Though the present tense be used in such cases, warranty may often be seen. See notes on page 832, 33 Am. R. Yet the Courts do so only where the words and terms are such that no other construction is reasonable.

Where a policy describes house insured, and mentions how tenanted, and adds "not to be used as a coffee house," this makes a warranty, substantially; if a coffee house be established there, the policy will be avoided. So judged in a case in Missouri in 1852, Vol. 28, Hunt's M. Mag., *Lawless* v. *Tennessee M. & F.I. Co.* Would user as a coffee house, though discontinued before the day of the loss, avoid? *Semble*, it would.

If by a policy the assured warrant to cease distilling, (or, *semble*, use of a furnace; or use as a coffee house,) by a certain day, and do not, but do cease at a later date, but before the day of the fire; yet, if afterwards a fire happens, the insurers are free. (The insured kept secret an augmented risk during a time.) 1st part, p.344, Dalloz of 1856; and insurance in such case will be avoided as well as regards a building, as moveables in it.—*Ib.* And in 10 East's R. there is a case where a man insuring goods on a ship said she was to sail in a few days. She did not sail that month, yet he was held to have only represented what he believed about her time (intended) for sailing. That was a case of an owner of goods insuring in a ship not his, or under his control.

In *Bize* v. *Fletcher*,[1] the vessel insured was represented in writing as having had a complete repair, &c., and "intends to sail in September or October." She did not sail till 6th December; yet insurers, fighting the insured, did not pretend even that there had been *a warranty to sail* in September or October, and that that warranty had been broken.

[1] 1 Dougl.