by the sum of £300 paid annually for contingencies, as compensation—should have been, and evidently were, so duly recorded for present use and future reference, should need occur, else all would have been confusion and uncertainty where surety and exactness were obligatory. Hence, it necessarily follows that these indispensable records constituted a legal portion of the agency outfit, which, like all other direct expenses incurred in the conduct of the business, were, by the conditions of the original contract, to be at the sole charge of the plaintiffs, and for the defendants' share, if any, the compensation hereinbefore recited was to be a full equivalent.

Moreover, it further necessarily follows, regardless of the unimportant fact by whom the cost of the books was defrayed, that: *first*, inasmuch as these records *constitute the original and sole vouchers legally admissible before the courts of evidence*, in case of disputes attending the defendants' business at that agency (See Griswold's Text-Book, p. 701, for authorities),—the reports sent from time to time to the head office as to the condition of affairs at the agency being but secondary copies or memoranda, were not available for the purposes of evidence; and *second*, as lacking these only authentic records, nothing could be definitely known as to the liability of defendants to their several policyholders; who they were, nor when the several policies would expire; or which were already cancelled; nor on which of them, if any, the premium remained yet unpaid; nor under which losses occurred, paid or unpaid; in fine, being thus an integral indispensable portion of the agency business, they should have been considered, as they were to all intents and purposes of the appointment, strictly the property of the defendants, and like any other agency property belonging to them, without further question, should have been surrendered at the time of the surrender of the agency, after the manner of an inventory of the property so delivered of which a mere copy would not be valid. Had it been the intention of the parties that the cost of the agency books should be an exception to the current expenses chargeable to the plaintiffs, it would have so appeared in the original contract of appointment under seal of the company; not being so excepted, the legal construction of that contract falls under the old law doctrine of "*Expressio unius exclusio est alterius*," and takes it out of the power of either court or jury to substitute a new parol contract for one made originally under the solemnity of a seal.

As to the ownership of the business standing upon these same books at the termination of the agency, and claimed by plaintiffs as their property: So far, at least, as to the unexpired or still current portion thereof, upon these books, at that juncture, it was beyond all question the exclusive property of and at the risk of the defendants, by whom all losses were to be paid. Hence, *after entry upon these books*, the plaintiffs could have no property interest therein, they having, so to speak, then and thereby sold and conveyed all interest in that portion at least to the defendants, who thereupon assumed all attendant risks of loss under the policies therein entered, and for which the successive commissions charged up upon each policy issued and recorded and the share of the profits, if any, thereon when ascertained (which alone, by the way, constituted the only ownership or interest of the plaintiffs therein) were to be full compensation. The sole interest of plaintiffs, if any existed, in this portion of the business was simply in the good-will or benefit to the extent of the commissions to be derived from the *chances* of renewals of the several insurances as the recorded policies should expire, if they could retain them, as against the defendants or other agents competing for them. This was the extent of their ownership of the business at the best, and this depended solely upon their ability to retain it when open to competition by others.

That the ownership of the books of a recording agency, local or general, must of necessity under attending circumstances vest in the companies, is so obvious and unquestionable, that this point has seldom been brought before the courts for a decision upon its merits. By an English County court,—reported in THE INSURANCE AND FINANCE CHRONICLE for Dec., 1886—where an agent attempted to surreptitiously "sell the books of his agency," it was held that "agents had no property whatever in their books, and hence no right to sell them," and further, that "customers were customers of the Society and not of the Agent, and any agreement to sell the books was illegal, and any sums paid to them were recoverable." All of which is in full harmony with the tenor of the foregoing discussion. So also in a case of the Prudential Insurance Co. of London, where an agent refused to surrender the books at the close of his agency upon demand of the company. The matter was taken into Court, but upon the subsequent delivery of the books further proceedings were dropped, the court, however, giving the agent notice, that unless voluntarily surrendered he could be legally compelled to deliver them up.

With a view to prevent the possibility of such unpleasant controversies, it is now the custom generally for the companies to furnish all supplies from the headquarters for the use of the agency. There are agents to be found who keep a double set of books so as to be able to retain a record of their business, in the event of the removal of any of their companies.

The general understanding in these particulars, at the present time, may be summarized as follows:—Policies of insurance are unlike merchandise, which latter when sold and delivered becomes the property of the purchaser, and being tangible he can hold it; while an insurance policy represents a contingent interest, and for a time only, which may or may not be renewed by the insured on expiration, either in the same or some other office, or not at all. Hence, neither agent nor company can claim an absolute ownership in such policies. If an ex-agent can secure the renewals as they fall in for a new office as against the old one, he has as much right so to do as if the risks had never been written on the books of the latter office, for commissions paid to agents do not *purchase* the business outright. If that were so understood, the agent would require a bonus,—more or less heavy as his business might be more or less select and valuable,—such commission, as the term imports, being simply a compensation for the use of his capital, *i. e.*, personal endeavors and influence in controlling business for such company; and this so long only as he remains the agent of and the company continues to pay such commission, not salary; but, as before said, business once entered upon a company's books is the exclusive property of such company, so long as it remains current as recorded, and at the company's risk. If an agent works under a salary he would be simply a *clerk*, and any business obtained by him would belong, by law, to his employer; but a simple commission upon business done by an agent for his company gives no ownership in the source of the business (Baker *v.* Conn. Mut. Life Co., U. S. C. C., N.Y., XII Ins. Law Jour. 683).

While an agent may not legally sell or dispose of the books the personal property of the company, or the business therein recorded, the law permits him to transfer the *good will* of such business—which is simply the transferring for a consideration the *chance* or opportunity of the purchaser being able to retain and secure the continuance of what has been already established by the vendor,—a mere chance which vests in such vendee, nothing more than the possibility that the preference heretofore extended to the vendor by his customers will continue to be extended to the vendee. The value of the good-will of an insurance agency is a substantial right, and precarious as it must be, an agent may, with or without the consent of the companies, dispose of the same, if he can find a purchaser (Phyfe *v.* Wardell, 5 Paige Chy. N.Y. 279; Armour *v.* Alexander, 10 *id.* 571; Hathaway *v.* Bennett, 10 N.Y.R. 108; and Barber *v.* Conn. Mut. Life, *supra*.)

Respectfully,

J. G.