MEANING OF WORD "FIRE."

An interesting opinion has been rendered by the Supreme Court of Georgia in the case of Cannon vs. Phoenix Insurance Company of Hartford. This was a test case in which a number of companies were involved. The claim was for a loss which did not come within the meaning of the word "fire," as used in the policy, and the complete manner in which the subject was treated by the court renders the decision one of value to all companies. It was as follows:

Cannon vs. Phoenix Insurance Company of Hartford, Conn. --Before Judge Fite.—Whitfield Superior Court.

Lewis, J.—1. An insurance company which, by its policy contracts to insure "against all direct loss or damage by fire," etc., is not liable for damages arising from smoke and soot escaping from a defective or disarranged stovepipe, and emanating from a fire intentionally built in a stove and kept confined therein; nor for damages caused by water used in cooling a portion of the ceiling heated by such pipe, but not actualy ignited thereby, it not appearing that the use of water was necessary to prevent ignition.

2. There was, on the trial of an action against an insurance company, no error in refusing to allow the plaintiff to introduce in evidence a proof of loss which showed on its face that the company was not liable, nor in refusing to allow the plaintiff to prove by parol testimony facts, a recital of which in the proof of loss at the time of its presentation to the company would have made the proof legally sufficient to support a claim of loss.

Judgment affirmed. All concurring. R. J. & J. McCamy for plaintiff in error. Smith, Hammond & —Smith, King & Spalding and Shumate & Maddox, contra.

Lewis, J.—This was a suit brought in Whitfield Superior Court by A. E. Cannon against the Phoenix Insurance Company of Hartford, Conn., on an insurance policy issued by the company on plaintiff's stock of merchandise alleged to have been injured and damaged by fire, the loss amounting to $3,000, and the defendant's liability therefor prorated with other concurrent insurance, being $300. On the trial of the case plaintiff introduced the policy of insurance, one material part of which is as follows. "In consideration of the stipulations herein named, and of $37.50 premium, the said company does insure A. E. Cannon for the term of one year from the 15th of February, 1897, at noon, to the 15th of February, 1898, at noon, against all direct loss or damage by fire, except as hereinafter provided, to amount not exceeding $2,500, upon the following described property, to wit, on her stock of merchandise, consisting chiefly of dry goods, notions, hats, clothing, caps, boots and shoes, etc.

Plaintiff then offered and read in evidence the proof of loss made and given by plaintiff to defendant, the material part of which is as follows. "To the Phoenix Insurance Company of Hartford, Conn.: By your policy of insurance, No. 1115, issued by your agent at Dalton, Ga., on the 15th day of February, 1897, for the term of twelve months, you insured the undersigned, A. E. Cannon, against loss by fire to the amount of $2,500 on her stock of goods, consisting of clothing dry goods, notions, boots, shoes, hats and caps, contained in the two-story brick metal roof building, situated at Nos. 553 and 554, on the east side of aHmilton street, Dalton, Ga., block No. 4. On the third day of November, 1897, the same was damaged by fire in the following manner: in arranging the stove on the ground floor of the building the day before, the pipe thereof which extended through the ceiling and through the second story of the building, became disengaged at the ceiling of the second floor; and when a fire was built in the stove on the morning of the 3rd November the smoke and soot escaped into the second story room where the damaged goods were situated. When the trouble was discovered, the room was full of smoke and soot, and the ceiling where the pipe went through was very hot, and by reason of the smoke and soot and of the water used in cooling the ceiling the goods were damaged as here set out."

Then folowed, in said proof of loss, a statement of the other insurance on the same goods, together with a complete inventory of the goods damaged, with the amount of damages claimed thereon. To the introduction in evidence of this proof of loss the defendant objected, on the ground that in said proof of loss it is stated that the goods were injured simply by reason of the smoke and soot, and that there is no allegation in said proof of loss that there was any actual burning of anything except the material put in the stove purposely to burn, and that said proof of loss did not show or claim to show that there was any loss or damage by fire under the terms of the policy. The court thereupon sustained the objection. Plaintiff's counsel then stated to the court that when said proof of loss was furnished, and for some months afterwards, it was not known to the plaintiff that there had been any actual burning, and they were prepared to show that in about three months after the injury to the goods the plastering of the ceiling of the second story room fell down, and disclosed the fact that some of the laths and joists to which they were nailed had in fact taken fire and were charred. Counsel for defendant objected to the admission of this testimony, upon the ground that it was irrelevant and incompetent; that the furnishing of a proof of loss showing a loss under the policy was a condition precedent to any liability under the policy; and that it was not competent for the plaintiff, after having furnished a proof of loss satisfactory to the defendant, which showed no loss by fire under the terms of the policy, to now undertake to prove a loss by fire by parol evidence offered for the first time on the trial of the case. The court sustained the objection and ruled the testimony inadmissible.

Counsel for the plaintiff then admitted that without a proof of loss he was unable to make out his case, and that a non-suit was inevitable; the defendant's counsel thereupon presented to the court and took an order granting a non-suit.

The contract between the parties stipulated that if fire occurred the insured shall give immediate notice of any loss thereby in writing to the company, and in sixty days after the fire shall render a statement to the company, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the time and origin of the fire, etc. It was further stipulated that no suit or action shall be sustainable in any court of law or equity until full compliance by the insured with this requirement.

To these several rulings of the court the plaintiff assigns error in the bill of exceptions.

1. Under the stipulations in the policy there can be no question that, as a condition precedent to the admission of the loss, the proofs of loss should be submitted to the company within the time prescribed. Southern Home Association vs. Home Insurance Company, 94 Ga., 167-9. The sufficiency of such proofs on the trial of the case is a question for the court, and to be sufficient they should show a loss within the terms of the policy. Trav. Ins. Co. vs. Sheppard, 85 Ga., 751-61-4. The question then is whether the proofs of loss submitted in this case were within the meaning of the policy It seems that in arranging the stove on the ground floor of the building the day before the damage the pipe, which extended through the ceiling of the second floor, became disengaged at that ceiling, and that when the fire was built in the stove on the next morning, smoke and soot escaped from the pipe into the second story room where the damaged goods were situated. The damage claimed, therefore, in the notice of loss, was by reason of the smoke and soot and of the water used in cooling the ceiling. It does not appear from the proofs of loss that there was any fire