

ing was destroyed by fire on the 13th of January, 1865. The defendants having refused to pay the amount claimed, the plaintiff instituted the present suit on the 7th of July, 1865. Several pleas have been filed, but the one on which the present contestation turns is that by which the defendants invoke the second condition on the back of the policy or contract of insurance. By this condition it is stipulated that in the event of any change in the occupation of the buildings, of a nature to increase the risk, the insured should be bound to give notice thereof in writing to the Company, and to pay an additional premium, in default of which the policy would be null. There is no doubt that such a condition is a part of the contract which must be strictly observed. On this plea the plaintiff has joined issue by answering that there had been no change of occupation of a nature to augment the risk, and that the Company had no right to an additional premium. That after the insurance had been effected several changes of occupation had taken place with the consent of the defendants, among others, that these buildings had been occupied as a vinegar manufactory immediately before their occupation as a tavern, and that the defendants had sanctioned this occupation as a vinegar manufactory, which was more dangerous than a tavern. That the defendants, or their agent at Belleville, Mr. Chandler, knew that the premises in question were occupied as a tavern, and that the insurance was renewed on the 4th November, 1864, on payment of the same premium.

The case was submitted to a jury, on a suggestion of facts embracing the whole contestation, and more especially on the two points which now constitute the only points in dispute, viz., 1st. Whether the occupation of the premises as a tavern increased the risk; 2nd. Whether the defendants, directly, or by Mr. Chandler, their agent at Belleville, had consented to this occupation, so as to preclude them from invoking the second condition above mentioned. Ten of the jury replied to the seventh question, that the premises had been occupied as a vinegar manufactory long before the 4th of January, 1864, and that this risk was as great as that of a tavern. But this cannot

serve as a ground for deciding the point raised between the parties, for the Insurance Company might have permitted a vinegar manufactory, or closed their eyes to this fact, and yet have a perfect right to complain of the occupation of the premises as a tavern. The Company alone were the judges as to whether there was a greater or a less risk incurred by the introduction of a tavern, and so long as the Company were not notified of the fact in writing, or did not do anything equivalent to an admission of the change, they preserved their right.

To the 8th question: "Was the Company or its agent, at Belleville aforesaid, notified or aware, before the occurrence of the said fire, and how, of the occupation of the said buildings and premises as a tavern?" ten of the jurors answered, "there is no evidence of the Company having been notified of its being occupied as a tavern, *but we think the agent was aware of it.*" The latter part of this answer is but little satisfactory, and expresses a great deal of doubt in the minds of these ten jurors.

To the 9th question, they replied that the substitution of a tavern for a vinegar manufactory did not increase the risk to an extent to justify an increase of premium. I have already said that it was for the defendants alone to decide, whether the risk was thereby increased or diminished.

The several answers of the jury being in favor of the plaintiff, the defendants have been compelled to move that, notwithstanding the verdict and the answers of the jury, judgment be rendered in their favor. Two questions, of law and of fact, present themselves for decision. On whom did it devolve to determine and to say whether the occupation as a tavern was more dangerous, and gave rise to the payment of an additional premium? The renewal of the insurance by the payment of the premium in November, 1864, should be considered a new insurance effected on that day. A few authorities will show what was the duty of the insured, who must be supposed to have given, or who should at least have given on that day a description and designation stating the new occupation. Pothier, No. 199. "L'obligation que la bonne foi impose aux parties, de ne rien dissimuler de ce qu'elles savent sur