

the 8th condition did not apply to cases in which hazardous goods were specified, in the policy, as the subjects of insurance. 2nd. Because the 8th condition did not apply to policies effected, not on buildings, but on stock in trade.

The respondent contended that the judgment appealed from was correct, because the undertaking of defendants was conditional, the condition being that there should not be upon the premises at any time, or at all events at the time of the happening of a fire, more than 56 lbs of gunpowder.

The appeal was dismissed.<sup>1</sup>

§ 177. *Hazardous goods.*

The printed part of a policy makes the policy null if any hazardous goods are kept; yet an insurance itself being on a stock of a country store by a policy insuring goods such as usually kept in country stores, the policy was held good on fire happening, though some hazardous goods were kept, but not beyond what is usual in country stores; the written matter was held to control printed.<sup>2</sup>

But some clauses read to prohibit if not specially provided for. In such a case, in Massachusetts, they hold that generality of mention of a country store stock cannot be held special providing against the written clause against gunpowder.<sup>3</sup>

§ 178. *Loss by Camphene Oil, Spirit Gas, &c.*

"This Company will not be answerable for any loss or damage to buildings or the contents of building in which is used or stored Camphene Oil, Spirit Gas, or any other article for light, of which Spirits of Turpentine or Alcohol form a component part, unless the same is specially agreed upon, and set forth in the Policy."

Under such condition, must the camphene etc. be used or stored at the time of the fire? Perhaps. If so, if use have ceased before the fire, insured will recover.

<sup>1</sup> *McEwan et al. v. Guthridge* (2 Feby. 1860), 13 Moore's P. C. Rep.

<sup>2</sup> *Pinder v. King's Co. F. In. Co.*, 36 N. Y. Rep.

<sup>3</sup> See 18 Alb. L. J. p. 224, as to keeping of hazardous articles, camphene, kerosene, fireworks. Matches even are sometimes prohibited in stores.

Some policies have a clause so plain that the use of camphene may avoid the policy, though the use of it have ceased long before the fire.

Under some policies, camphene oil is not to be used without special permission of the insurers, and the policy is avoided if use be without such permission. Under such a policy and condition, A may insure his house; afterwards use, without permission, camphene oil, for a week or so; discontinue its use; afterwards his house may burn, and the insurers will go free.<sup>1</sup>

In *Stettiner*, respondent v. *Granite I. Co.* appellants,<sup>2</sup> insurance was upon goods in a building; lighting the premises insured by camphene, "or spirit gas," without written permission on the policy was to "render it void." The premises were afterwards lighted with *burning fluid*. One witness said that spirit gas and burning fluid were the same; but the Jury found the burning fluid not to be the spirit gas mentioned in the policy. It was held by the Superior Court N.Y., that it was wrong in the judge, at the trial, to hold that the condition in the policy only related to insurance upon *buildings*, and not to insurance upon goods. Judgment would have been reversed upon this ground, but for the jury's finding that the burning fluid was not spirit gas.

In *Lancaster F. In. Co.*, appellant v. *Lenheim*, (Pennsyl., 1879, 33 Am. R.) a stock of general merchandise was insured, "of all kinds usually kept in a country retail store" "except as hereinafter provided." Then followed that the Co. was to be "exempt from liability for loss where turpentine or benzine were deposited, stored, kept or used without written consent on the policy." The exempting clause was printed; the insurance clause written. The insured kept both turpentine and benzine for sale without such consent. The policy was held void, though those articles might be part of merchandise usually kept in country stores.

<sup>1</sup> Hunt's Merch. Mag. vol. 28., (A.D. 1852) *N. W. A. Co.*, Appellant, and *Mead*, Respondent. *Semble*, such use avoids the policy, though it have been discontinued before the fire.

<sup>2</sup> 5 Duer's R.