

in defendant company. He said his loss upon the property so insured was \$7,264.74. Genslenger had at one time insurance upon his property in the hotel to the amount of \$6,100, viz., \$5,100 in the Phoenix and \$1,000 in the Union. In December, 1901, Genslenger made an assignment for the benefit of his creditors, and plaintiff bought Genslenger's furniture in the hotel from the assignee. After the assignment, and before the policy for \$5,100 expired, the agent of the Phoenix company asked plaintiff, in case he bought, to retain the insurance. Plaintiff said he would do so, and wanted the agent to keep the insurance in force. This the agent promised to do, and left with the plaintiff a renewal receipt, filled out in the name of Genslenger, purporting to continue the \$5,100 policy for one year from 3rd January, 1902. The renewal premium was not in fact paid, and after the fire the Phoenix company denied any liability to plaintiff or to any one else. Plaintiff brought suits against the Phoenix and the Union, and Carrier, the agent. The suits were not brought to trial, but were settled for a sum said to be for costs. There was no recovery for loss on the Genslenger property.

Neither the \$1,000 insurance nor the \$5,100 insurance was in force at the time of the fire. Apart from that, the property covered by defendants' policy was not the same as the property covered by these other policies. *Mason v. Andes Ins. Co.*, 23 C. P. 37, *Bruce v. Gore District Mutual Ins. Co.*, 20 C. P. 207, *Gardiner v. Waterloo Mutual Ins. Co.*, 6 A. R. 231, *North British and Mercantile Ins. Co. v. Liverpool and London and Globe Ins. Co.*, 5 Ch. D. 569, referred to. . . . The insurance sued for was not against the same loss as in the other policies referred to, but against loss on other goods. The Genslenger insurance cannot be considered as "concurrent" with insurance upon property which he never owned, or as applicable to any other property than that which plaintiff purchased from Genslenger's estate. No question arises in this action as to the policy which plaintiff himself held in the Union for \$2,500. That covered plaintiff's own furniture, and therefore the "same property." There were insurances on this property of \$6,000. The loss was \$7,264.74, so no question of contribution arises on these alone. There was not any admission by plaintiff in proofs of loss of any insurance upon the same property such as was contended for by defendants. Judgment for plaintiff for money in Court and \$937.53 in addition, with costs.