under certain watchmen clauses it is proper to receive evidence of usage, and to submit to the jury the question whether the insured employed a watchman to look after the property in the manner in which men of ordinary care in similar departments of business manage their own affairs of like kind. But they all go off upon the proposition that the terms of the warranty are not explicit as to the time and manner of keeping a watch. Thus in the Massachusetts case (*Crocker* v. *Insurance Co.*, 8 Cush. 79, the language of the clause was, 'a watchman kept on the premises;' and in the Illinois case (*Insurance Co.* v. *Shipman*, 77 Ill. 189), 'a watchman to be on the premises constantly during the time until September 1, 1872.' In the latter case plaintiff had employed a day watchman and a night watchman, and the only question considered was whether it was necessary for the watchman to be actually on the premises on which the insured buildings were situated. In the case before us the terms of the warranty are explicit as to the time of keeping a watch, and, on the undisputed evidence, we think the court ought to have held that the plaintiffs had not complied therewith. The mill was idle two months prior to the destruction thereof by fire, and the evidence shows that plaintiffs did not employ a watchman 'to be in and about the premises day and night.' A watchman was employed, but he was not instructed to watch the premises at night, and as a matter of fact, slept every night in a building distant three hundred or four hundred feet from the mill. Mr. Minear, the superintendent, testified that McMurray, the watchman, was not instructed to watch the premises during the night; that his instructions were not special, 'either at day or night.' In the nature of things, it could not be expected that one man could watch the buildings day and night (only one watchman was employed), but if it be assumed that he could, no one was employed to do so. There is no ambiguity in the phrase 'day and night.' 'We do not need a dictionary, nor a law book, nor the testimony of an expert, to tell tell us that a man who is employed to watch in the daytime, and is permitted to sleep at night, is not a watchman at night.' *Brooks* v. *Insurance Co.*, 11 Mo. App. 349; *Glendale Woolen Co.* v. *Protection Ins. Co.*, 21 Conn. 39. It is not a case of mere negligence. If a loss is occasioned by the mere fault or negligence of the watchman, unaffected by fraud or design on the part of the insured, it is within the protection of the policy; but to entitle the insured to recover it must appear that he has in good faith employed a watchman to perform the duties required by the terms of the warranty.. *Trojan Min. Co.* v. *Fireman's Ins. Co.*, 67 Cal. 27; *Wenzel* v. *Insurance Co.*, id. 438; *Cowan* v. *Insurance Co.*, 78 id. 181; *Waters* v. *Insurance Co.*, 11 Pet. 219. It does not appear whether the watchman was actually on duty at the time the fire occurred. If the fact be considered as material, it is sufficient to say, that defendant having shown the mill was idle, the burden of proving a compliance with the warranty rested upon the plaintiffs. *Cowan* v. *Insurance Co.*, *supra*; Wood Ins. (2d ed.), 1136."

CONTRACT IN RESTRAINT OF TRADE.

The grocers in a certain town agreed with a firm which was about to open a butter store that they would not buy any butter for the term of two years. Said firm paid nothing to the grocers, nor did it buy out any established business. *Held*, that the contract was void for want of consideration. The history of the law upon the question of contracts in restraint of trade is an interesting subject of investigation. The books abound in cases upon the subject. Anciently all contracts were void which in any degree tended to the restraint of trade, even in a particular locality, and for a limited time. This ancient rule has been so far modified, that although agreements in general restraint of trade are invalid, because they deprive the public of the services of the citizen in the occupation or calling in which he is most useful to the community, and expose the people to the evils of monopoly, and prevent competition in trade, yet an agreement in partial restraint of trade will be upheld where the restriction does not go beyond some particular locality, is founded upon a sufficient consideration, and is limited as to time, place and person. It is accordingly everywhere