than their share, and "even enough to cover the whole loss," and this whether they had knowledge of all the policies at the time or not.

He refers to *Lucas* v. *Jeff. I. Co.* He does not mean that each is so liable that the plaintiff, having been paid his whole loss, say from two, may go against a third insurer and make him pay. I take the case referred to to have been this: Plaintiff sued one of three companies who had insured him. It was held that he had right to recover from each its rateable portion, and if two paid more, yet the third was not freed, but had to pay its rateable portion of the loss. It was not made to appear that the plaintiff had, from the two companies not sued, gotten full indemnity, or enough to cover his whole loss. *Shaw* adds: "Where, however, there are several policies, which do not all contain this clause, and those not containing it pay to the extent of their subscriptions, which is more than their rateable share, this will be a defence *pro tanto* in an action on the policies containing this clause, and if the policies without the clause have paid enough to cover the loss, it is a complete defence for the others, for they are liable to contribute to the underwriters who have paid. *Lucas* v. *Jefferson Ins. Co.*, 6 Cowen, 635."

There is no contribution between policies containing the clause referred to; the agreement is that each insurer shall be responsible only for a given portion of one sum (say I), but does not *Shaw* imply that there *is* contribution—contribution it would not be so much as indemnity for money paid. "Shall bear to the whole amount assured thereon," in the above condition, what does this mean? Suppose A on first May, 1860, to insure his house for £500, and at the time of taking this policy to declare a previous insurance of £500 made 1st January, 1860; suppose this 1st Jan. policy to be allowed to expire, and a fire to happen on 1st April, 1861, and to destroy the house worth over £500, may not A recover the £500 of the policy of 1st May? He may; as if the words "at the time of the loss happening" were between the words "assured" and "thereon." If the first insurance be not in force at the time of the loss happening, the second company (in such a case as put) cannot claim to be liable only for a rateable proportion of the loss.[1]

Contribution condition: "Other insurances being, the last insurers are to be liable only proportionately." This extends to other insurances in part on this and in part on other property; although what is insured on one or other be not particularized. *Blake* v. *Exch. Mut. I. Co.*, Monthly Law Reporter of 1858, *Boston.*

§ 187. *Other insurance upon specific thing included in policy.*

Sometimes there is a condition such as this: "If any specific parcel or thing, &c., included in this policy, shall at the time of fire be insured in this or other office, this policy shall not extend to cover the same, except as to excess beyond the amount of specific insurance," etc.

Fairchild v. *Liverpool & London Ins. Co.*[2] was a case of goods burned; value $274,192. They were insured specifically for $324,000. The whole amount of loss was covered so by specific insurance. The plaintiff sued for a *pro rata* amount of the loss in proportion to amount insured, but the defendants were freed, and held not liable, for the loss was *under* the amount of the specific insurances, and their policy was conditioned that they should be liable only for any amount of loss beyond the amount of specific insurances.

§ 188. *Divisibility.*

Suppose insurance by one policy on two houses, and on furniture in a third, the total policy may cease, or become vacated, under the condition of certain policies, for alienation of only one of the houses, or of the furniture, though the insurer retain the houses. It is perfectly lawful to fix as *terme* for cessation of a policy the arrival of any event.

Angell, § 196, is to the effect that if three buildings be insured by one policy, each for a separate sum, alienation of one will only avoid the policy *pro tanto*, as if there had been three policies.

Trench v. *Chenango M. Ins. Co.*[3] was expressly declared bad law in the following case: S insured for one premium, $1600, on dwell-

[1] See *Forbush* v. *W. Mass. Ins. Co.*, 4 Gray's R.
[2] 48 Barbour.
[3] 7 Hill.