the building be burned down, the policy will be avoided. The length of time of user of fire heat is of no importance in such a case. Let the clause read, "so long as etc." and the policy may be saved, but policy words must always work. The mere introduction of the steam engine, of course, could not have been fatal.[1] The Chief Baron at the trial of this case charged that, if the use of fire was merely temporary and by way of experiment, the policy was not avoided. On motion of defendant, afterwards, this ruling was declared bad.

Using a steam engine for grinding, the jury finding no increase of risk (and in most cases there can be none) will not vitiate the policy—(a steam engine was mentioned in the policy). So gas burners may be multiplied, or candles.[2]

Alterations may suffice, in the absence of express condition, to avoid the insurance; *e. g.* where a description is given of premises, and such description is held a warranty; but if there be an express condition, say, if the risk be increased by any alterations or by the deposit of hazardous goods, then the policy to be vacated, it will not be vacated though these be introduced if the jury find "no increase of risk ever to have been." *Stokes* v. *Cox*[3] was a case of new erection of machinery, after an insurance. A boiler was in the building when insured. Afterwards an engine was added. There was a condition in the policy requiring notice "if the risk was increased." The jury found that there had been no increase of risk; and though no notice had been given, the policy was held not avoided, and the plaintiff finally recovered. Under the general law of insurance, the insured may be required to give notice of changes in buildings; under a policy with express condition on the subject he may be under obligation to do so only if the risk be increased. [Insurers sometimes fare worse by the extra precaution taken by them of making express condition, as in this case.]

[1] *Glen* v. *Lewis*, 17 Eng. Jurist; 8 W. H. & Gordon. A warranty, condition precedent, whether material or immaterial, must be observed. Flanders, p. 226.

[2] *Baxendale* v. *Harvey*, 4 Hurlst. & Norman.

[3] 1 Hurlstone & N., 3 Jur. A.D. 1856.

Under a plea of "alterations, and increased risk not notified to the insurer," the *onus probandi* is on the insurer,—*per* Parke, B., in *Barrett* v. *Jermy*. (The insurer affirms all that, so let him prove.) But if the insurer plead that material alterations were to avoid the policy unless notified, then, *semble*, he need only prove material alterations, and want of notice will be presumed; burden of proving notice is on the insured.[1]

Where a man builds on a lot of land adjoining my house insured, that does not avoid my insurance, unless a condition *casuelle* is in my policy for such a case. Duranton, Tom. xi., No. 17.

Is the insured bound to announce to the insurers the fact of another man's building alongside of him? Not, unless by a condition he has bound himself to do so.

A building insured under a policy avoiding the policy if the risk were rendered more hazardous by means within the control of the insured, described as contiguous, on one side only, to other buildings, may be made contiguous on both sides, and *non constat* that the risk is increased; it may be diminished.[2]

Angell, § 162, says that if there be no stipulation in respect of increase of risk by erecting adjacent buildings, a prohibition of so important a character is not to be implied, and the policy is not avoided by subsequent erection of buildings adjacent to the one insured. He cites *Stebbin's* case in 2 Hall.

In the absence of stipulation to that effect, the erection of a building adjacent to the one insured by the party holding the policy, though it might increase the risk, will not avoid the policy. But if such act of the assured was to cause loss to the company, the insurers would not be held liable, as he, the insured, caused the loss.[3]

Suppose a dwelling-house turned into a fireworks factory, and loss to happen after-

[1] See *Gardiner* v. *Piscataquis M. F. I. Co.* 38 Maine.

[2] *Stetson* v. *Massachusetts M. F. Ins. Co.*, 4 Mass. R. But one of the judges dissenting, said if such were caused by the insured's selling, it might vacate such a policy. Also that such contiguity of buildings extra necessarily increased the risk.

[3] *Howard* v. *Ky. & L. M. Ins. Co.*, 13 B. Monroe Ky. 282.