

such loss or damage, as he had actually incurred, but if on the other hand they thought he had done so with fraudulent intent, they should find a verdict for Defendants." * * * "As a knowledge of all the facts necessarily rests with the insured he is bound to furnish a true statement upon which he is to stand or fall." * * * "If there should be any fraud in the claim made, or false swearing or affirming, in support thereof, the claimant shall forfeit all benefit under such policy."

The Appellant represented that his books of account were lost, and he produced his cash book and an inventory of goods (Exhibit E) and the invoices of his purchases from the time he was in business at Richmond, and endeavored to shew by evidence of other traders, that with them, credit sales were generally equal to or greater than cash sales, and by this means sought to render it probable that he had on hand goods to the value, he represented in his statement (Exhibit A) £1526 14s 5d. As the equitable view of the case depends very much upon this portion of the defence, and as the evidence consists very much of calculations made upon Appellant's statements, Respondents feel necessitated to remark upon it somewhat at length. It is proper to observe in the first place, that the Respondents being a Mutual Insurance Company, almost every available witness in the locality was rendered incompetent from interest, being a member of said Company. The consequence was, that Respondents had to confine their evidence to the depositions of such accountants as they could procure, to test by computations and comparisons of Appellant's Exhibits, the correctness of his representation of loss. Vide evidence of Hollis Smith, Andrew McKay Smith, M. Bostwick, William Hopkinson and John Campbell, also statements produced with their evidence, shewing the calculations made by them.

On the 27th August, 1855, Appellant wrote Respondents (Appellant's Exhibit No. 8,) that all his goods, except £8 or £10 worth, were destroyed. On 20th September, 1855, when Appellant sought to obtain his insurance from the Ætna Company, he made affidavit (Respondents' Exhibit W. W.) that his goods saved, only amounted to £35. After he obtained his insurance from the Ætna, he sold at Auction, goods saved from the fire, (Respondent's Exhibit Q. Q.) to the amount of..... £53 19 3

It appears from evidence and comparison of the prices for same quality of goods charged in Appellant's Exhibit A, that the Auction prices at which these goods were sold, were less than one-third of the prices at which they were charged in Exhibit A.	
Then add.....	107 16 6
Appellant charges as lost bar iron, which could not have been destroyed or materially injured, at.....	9 13 0
This iron is not included in goods sold at auction. Appellant also charges nails which could not have been destroyed, and which are not included in Auction bill.....	7 14 0
By evidence of Thomas Burney on behalf of Respondents, it appears that a shew case of ribbons was saved, which were not sold at auction valued at.....	20 00 0
These items in the aggregate represent goods saved from the fire at the prices put upon them by Appellant, of the value of.....	199 7 9
These he represented to Respondents to be only worth £8 or £10, and afterwards made oath that they were only worth £35.	

From the description of many of the articles sold at Auction, it is perfectly apparent that in many instances the goods charged as lost are identical with those saved from the fire, and disposed of at auction.

An examination of Appellant's inventory E, and his invoices, will shew that he has charged in many instances in his statement A more goods of the descriptions specified than he ever had. Take for example the item of buttons, (see Mr. Bostwick's evidence) the whole of his purchases in stock of same in inventory E, only amounted to £13 13s 1d, while he charges as lost in A for the same, £32 14s 6d. Of the item spoons, he charges £7 4s 3d more than he appears to have purchased and had altogether. He charges more for knives than all his purchases and stock when inventory was taken. Gloves and mitts, all purchases and inventory, £33 13s 2d; charged as lost £30 11s 0d. All purchases and inventory of Scythes, £13 1s 11d; charged as lost, £15 7s 3d. All purchases and inventory of Stationery, £15 9s 9d; charged as lost £11 18s 9d. All purchases and inventory of flannels £32 9s 5d; charged as lost, £42 15s 8d. All purchases and inventory of Oil, £12 9s 0d; charged as lost, £14 2s 0d. Similar results are found respecting the greater portion of his charges for loss.

Taking a statement of his purchases of tea, tobacco and groceries, which must have found a ready sale, it is found that he charges in A as much as is contained in three or four successive invoices, while it is clear that these purchases made at different times were made to supply his stock as it was sold out.

By his statement A it would appear that that he had on hand goods worth £1526 14s 5d, besides what were saved, in all about £1700, while by his inventory of goods when he went into the New Store, at a time when sales were more brisk, and when Railroad works were going on, he only had about £900 worth of goods. It is also worthy of remark, that at this time when by his own representation his own goods were only about £900, he held the insurance in the two Companies for £975.

Appellant's statement A is not merely inaccurate, but is not even an approximation to accuracy. It is manifestly a fabrication, and his stock is not thereby represented at all. It is a misrepresentation. It is more than exaggeration. It is a falsification.

Appellant tried to prove that Respondents were aware of the double Insurance, through Leet one of their collecting agents. Leet was only an agent for the Company for receiving policies and making collections, and his accidental knowledge of insurance with another Company, could be no notice to Respondents. Besides, at the time of Respondents' conversation with Leet, the second policy with the Ætna, and the one existing at the time of the fire, had not been made. Policy with the Ætna (paper W) dated 24th July, 1855, conversation with Leet, (see his evidence) in the fall of 1854.

The attempt on the part of Appellant to prove that credit sales exceeded cash sales, by shewing what was case with other traders, is a *non sequitur*. The Appellant was one of the mushroom traders who grew up with the railroad, whose customers were mostly railway laborers, to whom, being transitory persons, little credit was given. A comparison of his business in this respect with that of old traders, who dealt with the permanent inhabitants of the country largely upon credit, is manifestly unfair.

An attempt is made by Appellant to impeach the computations of Mr. H. Smith; by the evidence of Mr. Kingan of the firm of Kingan & Kinlock, who were creditors of Appellant in a large sum. This attempt is however a failure. When Mr. Smith commenced his deposition he had not seen Appellant's Inventory E. This occasioned some slight inaccuracies in his calculations. These are, however, subsequently corrected by his evidence and the evidence of Mr. Bostwick, and Andrew McKay Smith. Mr. Kingan's own statement A A A, is quite as damaging to Appellant, as Mr. Smith's, for according to his representation, while it is possible, though very improbable, that Appellant might have had of the items of tobacco, tea, and shawls on hand stated in A numerous other items, such as buttons, spoons, knives, bonnet silk, patent balances, screws, combs, silk shoes, playing cards, iron, locks, &c., he admits by his figures that Appellant represented as lost more than he ever had purchased since he commenced trade, and in some instances more than twice the amount, with various other items, such as gloves and mitts, scythes, stationery, flan-